The Commonwealth of Massachusetts

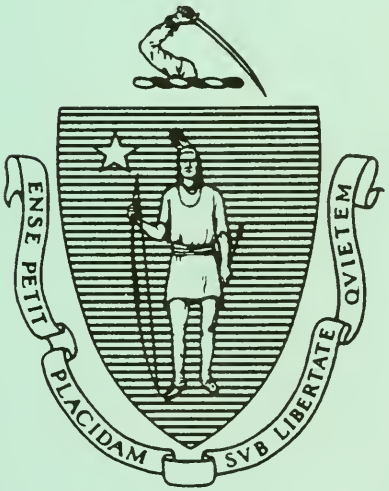
REPORT

OF THE

ATTORNEY GENERAL

FOR THE

Fiscal Year Ending June 30, 1992



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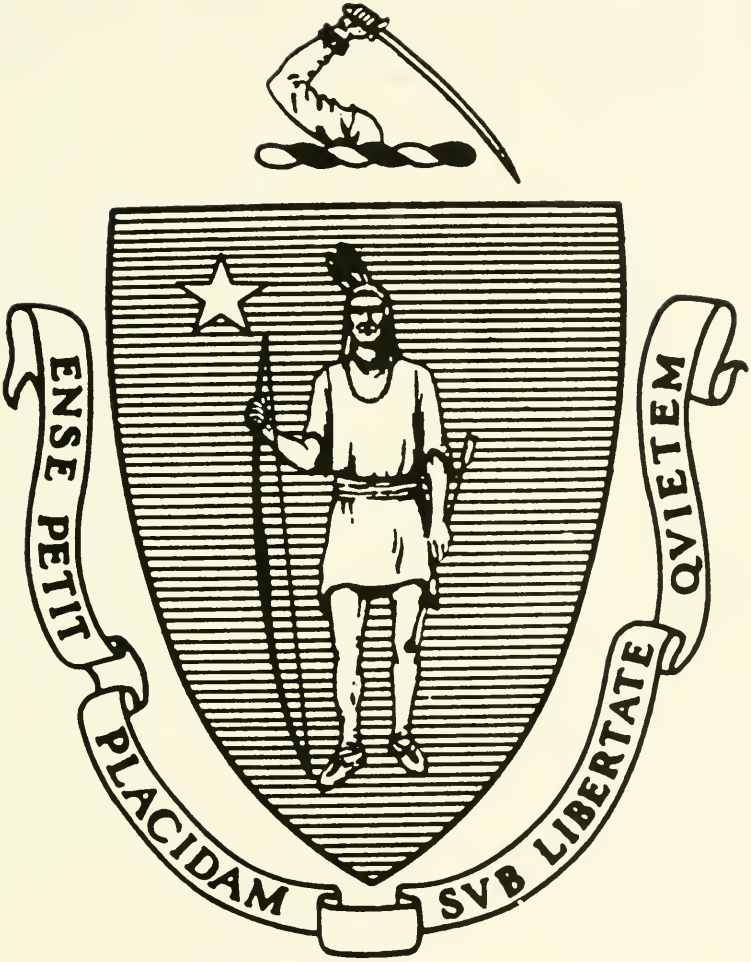
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COMMONWEALTH OF MASSACHUSETTS

In accordance with the provisions of Section 11 of Chapter 12 and of Chapter 32 of the General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This Annual Report covers the period from July 1, 1991 to June 30, 1992 and it marks the first full fiscal year in which I have been the Attorney General of the Commonwealth.

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Approved by: Philmore Anderson III, State Purchasing Agent

Fiscal Year 1993

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
SCOTT HARSHBARGER

FIRST ASSISTANT ATTORNEY GENERAL
Thomas H. Green

CHIEF OF STAFF
Donald L. Davenport

Assistant Attorneys General:

Richard Allen
Thomas Alpert
Dorothy Anderson
Barbara Anthony
Frederick Augenstern
Thomas Barnico
Judith Beals
Thomas Bean 16
Steven Berenson
Edward Berlin
Anne Berlin
Cynthia Berliner
Jean Berke 18
William Berman
Patricia Bernstein
Ann Berwick
Mark Bluver
Edward Bohlen
Barbara Boden
David Bookbinder 34
John Bowen 20
John Bowman
Howard Brick
Matthew Brock
William Brownsberger 7
James Bryant
David Burns
Andrea Cabral 70
Cecilia Calabrese 28, 65
John Capin
Susan Carnduff 57
Eric Carriker
James Caruso, Jr.
R. Michael Cassidy
Ellen Caulo 64
John Ciardi
Richard Cole
Mary Connaughton
Kevin Connelly 59
Joanna Connolly 15
Scott Cooper 35
Peter Coppinger 53
Pierce Cray
Phyllis Crockett
Michael Cullen
Maurice Cunningham
William Daggett
Leslie Davies
Scott Davis 29
Edward DeAngelo
George Dean
Paula DeGiacomo 51
Emily Den 8
Stephen Dick 5
Carol Dietz
Elizabeth DiTomassi 38
Lawrence Donnelly 52
Juliane Dow
Mary Beth Downing 56
William Duensing 27
Edgar Dworksy
Deborah Ecker
Stanley Eichner
Betty Eng 62
Judith Fabricant
Michael Fabbri
Jennifer Ferreira
Freda Fishman
Stacey Fortes 69
Bettye Freeman
Cynthia Gagne 37
Andree Gagnon 8
Rosemary Gale
Nancy Geary
Dwight Golann 55
I. Andrew Goldberg 6
Richard Goldstein 26
Tania Gray
Thomas Green
Leslie Greer
Mary Griffin
Irene Guild 15
Kristin Guyot 30
David Hallett 14
Daniel Halston
Joslin Ham 63
Natalie Hardy
Nancy Harper
LaDonna Hatton
Bennet Heart 28
Lisa Heinzerling 66
Virgina Hoefling
David Hofstetter 60
Philip Holmes
Pamela Hunt
Elizabeth Hyman 35
David Jackson 58
Marcia Jackson
Joyce Johnson 24
Diane Juliar
Michelle Kaczynski
Gerald Kelly 54
Michelle King
Michael Kogut
Pamela Kogut
Viveca Tung Kwan 12
Pablo Landrau
Jon Laramore 61
William Lee
Judy Levenson
Beth Levi
Martin Levin
Stephen Limon
Diane Lund 67
Margaret Malek
William Matlack
David Marcus 23
Thomas McCormick
Ellen McGinty
Karen McGuire
Susan McHugh
Paul McLaughlin
Mary McLaughlin
Kristine McMahon 11
Kevin McNeely 12
William McVey
William Meade 21
Elizabeth Medvedow
Joyce Meiklejohn
Howard Meshnick
Nicholas Messuri 4
James Milkey
Jonathan Mishara
Daniel Mitchell
Margaret Monsell 3
Sarah Morison
Christopher Morog
Madelyn Morris
Susan Motika
Mark Muldoon
Timothy Mullen
Robert Munnelly 29
Linda Murphy
Alexander Nappan
Kevin Nasca
Michelle O'Brien 13
Jerrold Oppenheim
Donna Palermino
William Pardee
Margaret Parks
Robert Patten 12
Lora Pellegrini 62
Anthony Penski
Djuna Perkins 31
Mary Phillips
William Porter
Anne Powers
Edward Rapacki
Carol Lee Rawn 20
Elizabeth Reinhardt 20
Benjamin Robbins 7
Deirdre Robbins 68
Beverly Roby 17
Anthony Rodriguez 32
Joseph Rogers 24

Deirdre Rosenberg 10
Abbe Ross
Stuart Rossman
Linda Sable
Peter Sacks
Thomas Samoluk
Ernest Sarason, Jr.
Pasqua Scibelli
Arlie Scott
Robert Sherman
Robert Sikellis
Jeremy Silverfine 25
Eleanor Sinnott
Myles Slosberg
Eric Smith
Joanne Smith
Mark Smith
Johanna Soris
Amy Spector
Susan Spurlock 1
Marie St. Fleur
Carol Starkey 23
Kevin Steiling
James Stetson
Deborah Steenland
Edmund Sullivan
Michael Sullivan
Walter Sullivan
Mark Sutliff
James Sweeney
Diane Szafarowicz
Pamela Talbot
Rosemary Tarantino 19
Neil Tassel 9
Jane Tewksbury
Jean Thompson 22
Jeffrey Tocchio
Edward Toro
Margaret Van Deusen
John Van Lonkhuyzen
Lucy Wall
Beverly Ward
Rebecca Webb
George Weber
Mark Weber 36
James Whitcomb
Douglas Wilkins
Jane Willoughby 33
Norah Wylie 5
Judith Yogman 15
Pamela Young
Andrew Zaikis
Reed Zars 50
Catherine Ziehl 20

Assistant Attorneys General Assigned To The Department of Employment & Trainin

Brian Burke
Elizabeth Ann Foley
Glen MacKinley 27
Paula Fox Niziak
Patricia Preziosa 23

APPOINTMENT DATE		TERMINATION DATE	
1.	07/13/92	50.	07/01/92
2.	07/22/92	51.	07/03/92
3.	08/01/92	52.	07/04/92
4.	08/02/92	53.	07/07/92
5.	08/03/92	54.	07/10/92
6.	08/31/92	55.	07/31/92
7.	09/08/92	56.	10/04/92
8.	09/09/92	57.	10/19/92
9.	09/14/92	58.	10/23/92
10.	09/21/92	59.	11/27/92
11.	09/23/92	60.	01/15/93
12.	09/28/92	61.	02/05/93
13.	09/29/92	62.	02/26/93
14.	10/01/92	63.	02/28/93
15.	10/05/92	64.	03/13/93
16.	10/08/92	65.	03/19/93
17.	10/13/92	66.	03/26/93
18.	10/19/92	67.	03/31/93
19.	11/02/92	68.	05/07/93
20.	11/09/92	69.	05/14/93
21.	11/16/92	70.	06/18/93
22.	11/30/92		
23.	12/01/92		
24.	12/07/92		
25.	01/04/93		
26.	01/11/93		
27.	01/19/93		
28.	02/01/93		
29.	03/08/93		
30.	03/15/93		
31.	03/29/93		
32.	04/01/93		
33.	04/05/93		
34.	04/26/93		
35.	05/24/93		
36.	05/25/93		
37.	06/01/93		
38.	06/14/93		

DEPARTMENT OF THE ATTORNEY GENERAL
STATEMENT OF FINANCIAL POSITION
FOR FISCAL YEAR ENDED
JUNE 30, 1992

ACCOUNT	ACCOUNT NAME	APPROPRIATION	EXPENDITURES	ADVANCE	ENCUMBRANCES	BALANCE
0810-0000	Administration	$12,478,481.00	$12,423,984.92	$ 0.00	$ 0.00	$ 54,496.08
0810-0014	Public Utilities Auth. by Ch. 1221 1973	508,682.00	506,750.82	0.00	0.00	1,931.18
0810-0017	Judicial Proceedings, relevant to Fuel Charge	75,000.01	75,000.01	0.00	0.00	0.00
0810-0019	Federal Lawsuit Alloc. of 1201-0100	5,000.00	0.00	0.00	0.00	5,000.00
0810-0020	Criminal Tax Unit Alloc. of 1201-0100 by Ch. 164, Acts of 88	187,332.00	184,836.48	0.00	0.00	2,495.52
0810-0021	Medicaid Fraud Control Unit	1,329,518.00	1,310,650.14	0.00	0.00	18,867.86
0810-0031	Local Consumer Aid Fund	606,339.00	606,325.33	0.00	0.00	13.67
0810-0035	Antitrust Div. Adm.	346,385.00	326,745.31	0.00	0.00	19,639.69
0810-0291	Insurance Auth. by Ch. 266, 1976	402,212.00	401,990.00	0.00	0.00	222.00
0810-0338	Auto Insurance Fraud by Ch. 338, 1990	100,000.00	98,663.25	0.00	0.00	1,336.75

ACCOUNT	ACCOUNT NAME	APPROPRIATION	EXPENDITURES	ADVANCE	ENCUMBRANCES	BALANCE
0810-0399	Worker's Comp.Fraud by Ch.399, S.3, 1991	$ 100,000.00	$ 3,428.03	$ 0.00	$ 0.00	$ 96,571.97
0810-0414	Forfeited Funds	183,766.98	69,941.72	0.00	0.00	113,825.26
0810-1010	Expert Witness and Litigation Service Alloc. (4400-1012)	262,112.26	93,159.69	0.00	0.00	168,952.57
0810-1031	Victim/Witness Assistance	129,566.00	129,566.00	0.00	0.00	0.00
0810-6651	Medicaid Related Litigation (Alloc of 0411-1050)	30,250.00	23,333.31	0.00	0.00	6,916.69
0810-7372	Asbestos Property Litigation (Alloc of 1102-7872)	652,725.10	652,513.40	0.00	0.00	211.70
0810-8882	Interior Modifications AGO Charities Office Ch.199,1987 (Alloc of 1102-8882)	6,000.00	0.00	0.00	0.00	6,000.00
0810-9881	Invoices For Suffolk County Jail Ch.199,1987 (Alloc of 1102-9881)	3,471.00	3,470.00	0.00	0.00	1.00
	Totals	$17,406,840.35	$16,910,358.41	$ 0.00	$ 0.00	$ 496,481.94
Schedule 2	Totals	$ 1,234,718.41	$ 611,300.84	$ 0.00	$ 0.00	$ 623,417.57
	Grand Totals	$18,641,558.76	$17,521,659.25	$ 0.00	$ 0.00	$1,119,899.51

DEPARTMENT OF THE ATTORNEY GENERAL
GRANTS AND TRUSTS
RECEIPTS AND DISBURSEMENTS
JULY 1, 1991 to JUNE 30, 1992

	ACCOUNT NUMBER	BALANCE JULY 1, 1991	RECEIPTS	DISBURSEMENTS	BALANCE 6/30/92
Local Consumer Aid Fund Reimbursement	0810-0033	$152,654.41	$ 295,955.29	$ 187,501.00	$261,108.70
Forfeited Funds (Ch.94C, S.47)	0810-0414	28,810.61	154,956.37	69,941.72	113,825.26
Expendable Trust (Ch.12,S.4a,6a)	0810-0415	0.00	154,120.00	19,102.51	135,017.49
Conference and Training (Ch.12, S.4a, 6a)	0810-0416	0.00	40,950.00	40,140.72	869.28
Attorney General Trust Fund	0810-6614	80,732.18	0.00	0.00	80,732.18
Water Pollution Control Program	0810-6630	0.01	67,832.27	50,337.84	17,494.44
Air Pollution Control Program	0810-6631	3,928.25	43,659.87	44,403.50	3,184.62
Hazardous Waste Enforcement	0810-6647	10,032.68	0.00	9,534.65	498.03
Narcotic Div.-Asset Forfeiture	0810-6649	0.00	170,000.00	167,513.84	2,486.16
Civil Rights-Southeast Asian (Alloc of 4000-0804)	0810-6650	0.00	28,333.00	22,825.06	5,507.94
Coastal Zone Management Program Implementation	0810-6661	2,693.47	0.00	0.00	2,693.47
TOTALS		$278,851.61	$955,866.80	$611,300.84	$623,417.57

DEPARTMENT OF THE ATTORNEY GENERAL
SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS
JULY 1, 1991 to JUNE 30, 1992

NAME	ACCOUNT #	BALANCE JULY 1, 1991	RECEIPTS	DISBURSEMENTS	BALANCE 6/30/92
Thomas C. McMahon v. Nyanza	0810-6732	$ 3,679.42	$ 0.00	$ 0.00	$ 3,679.42
Century Auto Appraisers, Inc. R.B.Stone & Peter Slate	0810-6862	6,800.00	0.00	0.00	6,800.00
Eric Bartlett d/b/a Bartlett Assoc. & Fix , Co.	0810-6885	2,000.00	0.00	0.00	2,000.00
Bruce Ledbury d/b/a Cars International	0810-6887	11,286.60	0.00	0.00	11,286.60
Andrews Paint Co., FG Andrews	0810-6905	1,295.50	0.00	1,295.50	0.00
North Shore Roommates Service	0810-6915	1,088.39	0.00	0.00	1,088.39
Diamond Chevrolet	0810-6917	7,396.00	0.00	0.00	7,396.00
Rusty Jones, Inc.	0810-6919	2,263.00	0.00	0.00	2,263.00
Business Educational Services,Inc.	0810-6921	162,298.81	100,000.00	163,254.20	99,044.61
Economy Auto Sales	0810-6925	7,136.60	0.00	0.00	7,136.60
Womens World Health Spa	0810-6930	20,000.00	0.00	0.00	20,000.00
Village Truck Sales, Inc.	0810-6934	68.82	0.00	0.00	68.82
Lee Auto	0810-6941	3,302.00	0.00	0.00	3,302.00

SUSPENSE FUNDS
RECEIPTS AND DISBURSEMENTS
JULY 1, 1991 to JUNE 30, 1992

NAME	ACCOUNT #	BALANCE JULY 1, 1991	RECEIPTS	DISBURSEMENTS	BALANCE 6/30/92
William Wolff	0810-6943	$ 517.55	$ 0.00	$ 0.00	$ 517.55
Miller Furniture	0810-6944	6,750.00	0.00	6,741.46	8.54
Tijuana Goldstein Star, et al	0810-6946	1,989.71	42.50	0.00	2,032.21
Ray's Auto Body	0810-6947	23,500.00	0.00	0.00	23,500.00
Hertz Corp.	0810-6950	4,584.02	0.00	0.00	4,584.02
Missions of Mercy(M.O.M)	0810-6952	1,865.00	0.00	0.00	1,865.00
Outdoor World, Inc.	0810-6953	8,988.98	9,947.23	2,461.90	16,474.31
European Health Spa	0810-6954	1,606.14	3,863.68	3,937.54	1,532.28
Beverly Enterprises	0810-6956	91,048.14	0.00	91,048.14	0.00
Michael Collins	0810-6957	200.00	0.00	0.00	200.00
Stephen J. Favorito	0810-6959	0.00	12,300.00	10,216.06	2,083.94
Craftmatic/Contour et al	0810-6960	0.00	215,000.00	56,240.45	158,759.55
TOTALS		$144,420.36	$241,153.41	$170,645.55	$214,928.22

DEPARTMENT OF THE ATTORNEY GENERAL
STATEMENT OF INCOME
For Fiscal Year Ended
June 30, 1992

Account Number		
0801-40-01-40	Fees, Filing Reports, Charitable Organizations	$ 285,535.01
0810-40-02-40	Fees, Registrations, Charitable Organizations	53,420.00
0801-41-02-40	Fines & Penalties, Civil Actions	656,405.66
0310-62-01-40	Reimbursement for Services, Cost of Investigations - Civil	8,795.11
0301-62-02-40	Reimbursement for Services, Cost of Investigations - Consumer	316.000.00
0301-62-03-36	Local Consumer Aid Fund-Reimburse For Service	295,955.29
0301-65-09-36	Fuel Assessment	75,000.01
0801-67-67-40	Reimbursement, Indirect Cost Allowances	228,246.00
0801-67-01-40	Reimbursement, For Service	649,560.00
0301-68-04-36	Forfeitures	154,956.37
0801-69-99-40	Miscellaneous	1,109,520.82
	Total Income	$3,833,394.27

CRIMINAL BUREAU

The Criminal Bureau is comprised of nine divisions: Appellate Division, Special Investigations, Medicaid Fraud Control Unit, Public Integrity Division, Environmental Strike Force, Urban Violence Strike Force, Division of Employment and Training, Economic Crimes Division, Narcotics and Organized Crimes Division.

CRIMINAL APPELLATE DIVISION

The Division handled 428 cases during the course of the year. These cases predominantly involved the defense of federal habeas corpus petitions attacking state criminal convictions, state habeas petitions, appeals from narcotics unit prosecutions and the defense of district attorneys, state correctional authorities and Treatment Center personnel, and other state officials and judges sued in the course of their official duties.

Two hundred and twenty-two (222) new cases were opened by the Appellate Division in FY 1992. This is a significant (38%) increase from the 161 new cases opened during the previous year.

In addition, Appellate Division attorneys participated in a 4-month Urban Violence rotation in Lowell District Court, a federal civil trial, criminal trials, and a lengthy motion for new trial. From an extensive wiretap operation, six indictments were obtained, and two other investigations were conducted, leading to an indictment and a continuing investigation. The Law Enforcement Newsletter is edited and produced in the Appellate Division.

SUMMARY

		Cases Handled	Cases Disposed
A.	Federal Habeas	147	72
B.	Federal Civil	41	21
C.	State Habeas	46	20
	State Civil	128	45
D.	211 §3	25	20
E.	Criminal	39	26
F.	Other	2	2
	Total	428	206

APPELLATE BRIEFS FILED

A.	U.S. Supreme Court	7			
B.	Ct.of Appeals 1st Cir.	9	A.Criminal:		27
C.	Ct.of Appeals 2d Cir	1	B.Federal Habeas:		12
D.	SJC	7	C.Civil/State Habeas:		17
E.	Appeals Court	32			
		56			56

RENDITIONS: 199 warrants reviewed; 23 hearings

SAAG Supervision: Treatment Center: 30 cases
Parole Board: 32 cases
Other: 21 cases

I. CASES HANDLED

A. FEDERAL HABEAS CORPUS

During the fiscal year July 1, 1991-June 30, 1992, the Appellate Division carried a total of 147 habeas corpus cases in the various federal courts, and 72 of these cases were disposed during the year. This only involves cases in which there was an order by the federal court for us to answer the petition.

We were successful in all but one case. The writ was granted by the District Court in Oses v. Commonwealth, and that decision was affirmed by the First Circuit.

We have filed a petition for writ of certiorari. The writ was granted because the federal courts concluded that various events infringed Oses's right to represent himself in his 1977 trial. The Norfolk County District Attorney intends to retry the case if our certiorari petition is unsuccessful.

Among the First Circuit decisions in our favor are: Amirault v. Fair (multiple child rapes) which involved a question of juror impartiality, and Bembury v. Butler (murder) which concerned the effect of an erroneous malice instruction.

B. FEDERAL CIVIL CASES

During FY 1992, the Appellate Division handled 40 federal civil matters, 5 of which involved our motions to quash subpoenas. Twenty-one (21) cases were disposed during the year.

There was a bench trial in one case, Cameron v. Tomes, in which the District Court found that Treatment Center resident had a constitutional right to treatment which was violated by the manner in which various security procedures were implemented. We have taken an appeal of this case.

C. STATE CIVIL/HABEAS CORPUS CASES

The Appellate Division handled 46 state habeas cases, 20 of which were disposed during the year.

We also represented various state officials in 128 state civil cases, 45 of which were disposed. Approximately twenty of these cases involved matters in which the investigative files of District Attorneys, the

State Police or the Attorney General were subpoenaed in civil cases. This is an area in which our caseload is rapidly growing.

D. 211S43 and other SJC Single Justice Matters
During the FY 1992 the Appellate Division handled 25 matters in the single justice session of the SJC. Twenty (20) of these cases were disposed.

E. Criminal Cases
Criminal Appeals Division attorneys filed briefs in 27 criminal cases, three of which have not yet been argued or disposed.

U.S.Supreme Court

1. Doherty v Massachusetts
2. Hussey v Massachusetts
3. Massachusetts v Moreau
4. Massachusetts v Tanso

S.J.C.

1. Collins v Commonwealth
2. Commonwealth v Alvarez, et al.
3. Commonwealth v Ford
4. Commonwealth v Forkin
5. Commonwealth v Penta (FAR application)
6. Commonwealth v Yazbeck (FAR application)

Appeals Court

1. Commonwealth v Claudio/Chaplin
2. Commonwealth v Colomna
3. Commonwealth v Dedrick
4. Commonwealth v Johnson
5. Commonwealth v Moore
6. Commonwealth v Murillo
7. Commonwealth v Murphy
8. Commonwealth v Nichols/Ruzzano
9. Commonwealth v Payton
10. Commonwealth v Pichaido
11. Commonwealth v Santiago
12. Commonwealth v Savage
13. Commonwealth v Sepulvedalle
14. Commonwealth v Soto
15. Commonwealth v Walker
16. Commonwealth v Wigfall
17. Commonwealth v Yazbeck

Division attorneys also participated in 12 different Criminal Bureau matters, 2 of which were disposed during the year.

F. OTHER

The Appellate Division handled 2 cases in Bankruptcy Court in which criminal prosecutions by the Department of Labor and Industries for non-payment of wages were sought yo be stayed pending the outcome of bankruptcy proceedings. Both were disposed favorably.

II. BRIEFS FILED

The Appellate Division filed 56 briefs during FY 1992; in the United States Supreme Court (7), First Circuit Court of Appeals (9), Second Circuit Court of Appeals (1), Supreme Judicial Court (7), and Appeals Court (32). Of these, 26 were in criminal cases, 11 federal habeas corpus, and 19 in civil and state habeas matters. Twenty-four cases were argued.

The division prevailed in all oppositions filed in the United States Supreme Court, but was unsuccessful in our two petitions for certiorari, Massachusetts v Tanso, and Massacusetts v Moreau.

Eight of the nine briefs submitted to the United States Court of Appeals for the First Circuit, were in habeas cases; 3 were argued. We were successful in all cases that have been decided but one, Oses v Massachusetts, discussed previously. We also prevailed in the Court of Appeals for the Second Circuit in a civil rights case brought against an Essex County Assistant District Attorney. That case was argued. In addition to the briefs listed above, a brief in lengthy Treatment Center litigation supporting the District Court's denial of attorney's fees was filed in Pearson.

Five full briefs, and two applications for further appellate review, were filed in the Supreme Judicial Court. Four cases were argued in that court. We were successful in Sheridan v Commonwealth, an appeal from the dismissal of an SDP §9 petition which concerned the statutory requirement
that a §9 petitioner appear at a meeting with a clinician; in Commonwealth v Ford and Commonwealth v Forkin concerning the amount of time to be served on probation surrenders of inmates from the Dedham House of Correction who had been given certificates of discharge from the federal master before their split sentences had expired because of overcrowding; and in Commonwealth v Alvarez and three companion cases in which we filed an amicus brief in support of the constitutionality of the "school zone" drug statute. We were unsuccessful in our two applications for further appellate review in Criminal Bureau narcotics appeals and in Collins v Commonwealth, a double jeopardy case handled for the Suffolk County District Attorney's office.

Briefs in 17 criminal and 8 civil cases were filed in the Massachusetts Appeals Court. Most of the criminal cases arose from Criminal Bureau Narcotics Division prosecutions, although Commonwealth v Dedrick was an appeal from the conviction of the man who shot two Massachusetts State Troopers. Fourteen criminal cases were argued. The division also handled several criminal appeals for the Suffolk District Attorney's office. The civil appeals, three of which were argued, included Miller v Tink, a habeas corpus case by a longtime Treatment Center resident who challenged the nature of his original SDP commitment after his criminal sentence expired and the judge had passed away.

There were a substantial number of civil and criminal cases pending on appeal at the close of the fiscal year.

III. RENDITIONS

Attorneys from the Criminal Bureau, at the request of the Governor's Office, review the legal sufficiency of applications for Governor's warrants. From July 1, 1991 through June 30, 1992, 199 different cases were reviewed.

Once an individual is arrested on a Governor's warrant, he has the right to file a writ of habeas corpus to challenge the sufficiency of the warrant. Hearings in these matters are handled by the attorneys who have initially reviewed the papers. During FY 1992, 23 matters were brought to hearing. One case, Flavel, petitioner, represents the extent to which these cases can be litigated. From the original superior Court case, the matter was presented to a single justice of the Appeals Court, and then to the Supreme Judicial Court (Single Justice). Flavel then filed for habeas corpus under a federal statute in federal district court, and after relief was denied, appealed to the Court of Appeals for the First Circuit. When the federal case was concluded, he returned to the Appeals Court and the Supreme Judicial Court.

We sent an attorney (Sikellis) to the National Conference of Extradition officials in June, 1992.

IV. SAAG CASES SUPERVISED BY APPELLATE DIVISION

A. Cases handled by SAAG (DMH attorney) at Treatment Center
A number of civil cases and state habeas corpus/ declaratory relief matters are handled, under the direction and supervision of the Appellate Division, by a DMH attorney assigned to the Treatment Center.

State Habeas:	24 opened	
	8 disposed	
State Civil Actions:	4 opened	
	0 disposed	
Federal Civil:	2 opened	
	0 disposed	
A total of 30 civil and habeas cases		
	(8 disposed)	

This attorney also currently handles the annual review hearings pursuant to G.L. c. 123A, §9. This year there were 35 hearings conducted (16 resulted in findings that the petitioner remained sexually dangerous, 15 resulted in release either to a concurrent prison sentence or absolute release), and 4 which have not been concluded.

Appeals from all cases handled by the DMH attorney are handled by the Appellate Division.

B. Cases handled by SAAG at Parole Board

A number of civil cases and state habeas corpus/declaratory relief matters are handled, under the direction and supervision of the Appellate Division, by Parole Board counsel: 32 cases were active at the end of June 30, 1992.

Appeals from Parole Board cases are generally handled by the Appellate Division although general counsel has handled a few appeals.

C. Other SAAG Cases Supervised: 21

1. Department of Youth Services v Rosenberg (Juv.Ct.) SAAG Hardoon - Matter of continuation of DYS commitment of juvenile past age 21.

2. Gildea v Sharkey (U.S. District Ct) SAAG Cowin - Federal civil rights action against state trooper in Norfolk CPAC unit concerning extradition of prisoner to Georgia. When Judge Cowin was appointed to the bench, the case was brought back to the Appellate Division to handle.

3. Commonwealth v Murphy (Mass. Superior Ct) SAAG Savignano - Motion for new trial in criminal case prosecuted by A.G.'s office.

4. Commonwealth v Kelley (SJC) SAAG Mikaitis - Juvenile matter.

5. Commonwealth v Hicks (SJC) SAAG Mikaitis - Juvenile matter. Same as Kelley.

6. Commonwealth v Hampden Division District Court Department (SJC Single Justice) SAAG Sahakian - Nominal party matter.

7. Commonwealth v Perkins (Uxbridge District court) SAAG Kesten - DYS matter.

8. Various subpeona matters SAAG Zeprun - Represent the Hampden District Attorney's office in motions to quash subpoenas in 14 separate cases.

SPECIAL INVESTIGATIONS UNIT

During fiscal year 1992, the Special Investigations Unit became fully operational with the acquisition of designated office space, equipment and staff. A total of 3 Assistant Attorney Generals, 2 Financial Investigators, 4 State Police officers and 1 secretary are assigned to SIU.

Investigations and Prosecutions

During this fiscal year, SIU reviewed a total of 16 new matters and initiated a full investigation into 6 of those matters. Two of those investigations led to indictments. In August 1991, 33 individuals were charged in 99 separate indictments for a variety of offenses including supervising an illegal gaming operation, loansharking, narcotics offenses, firearms offenses, attempted extortion, and conspiracy. Those cases are currently pending in Middlesex Superior Court.

In May 1992, 15 individuals were charged in 22 separate indictments in an alleged narcotics conspiracy. Those cases are also currently pending in Middlesex Superior Court.

Both of those prosecutions relied upon the extensive use of Court authorized wiretaps and electronic surveillance. Matters investigated by SIU during this fiscal year in one case included the review and analysis of over 300,000 pages of business records and related documents along with bank account and financial records. In addition, SIU reviewed materials referred by federal authorities for possible violations of state law in two cases.

Seizures/Forfeitures

During fiscal year 1992, SIU investigations and prosecutions resulted in the seizure of approximately 4 ounces of cocaine, 5 pounds of marijuana and the seizure of over 70,000 in U.S. currency. In addition, 3 motor vehicles were seized alone with a residence in Newton having an assessed value over $200,000. Civil actions were filed in Superior Court seeking forfeiture of those assets pursuant to G. L. c. 94C.

Statistics - Fiscal Year 1992

Total Defendants Charged	48	
Total Number of Indictments	121	
Arrests		20
Search Warrants	7	
Electronic Surveillance Warrants (Not including amendments and Renewals)	4	

Seizures:		
Monies	$70,000	
Motor Vehicles	3	
Firearms	10	
Real Property	1	
Narcotics:		
Cocaine	4 ounces/112 grams	
Marijuana	5 pounds	

URBAN VIOLENCE STRIKE FORCE

The Urban Violence Strike Force (UVSF) was organized in the spring of 1991 as part of Attorney General Harshbarger's overall commitment to improving the quality of life for residents of the Commonwealth's inner cities. Consisting of three to four experienced prosecutors who work in conjunction with the offices of local district attorneys, UVSF targets for prosecution crimes arising out of gang related activity, with a particular emphasis on crimes involving the distribution of drugs and/or the use of firearms.

In the first full year of its operation, UVSF established pilot projects in both Suffolk and Essex Counties and made significant gains both in establishing working relationships with local law enforcement agencies and successfully prosecuting individuals charged with the targeted offenses. Indeed, by directly indicting and aggressively prosecuting those individuals whose cases would have otherwise languished in district court for months, or been dismissed because civilian witnesses failed to cooperate with the prosecution, UVSF has secured the incarceration of a significant number of repeat offenders and has made a major contribution to the reduction of gang related crime in the City of Boston.

The Assistant Attorneys General who were assigned to UVSF during FY92 are John Ciardi, Marcy Jackson, Paul McLaughlin, Alex Nappan and Linda Sable.

Number of Defendants	186
Number of Pending Cases	44
Number of Convictions	99
Number of Defendants Incarcerated	91
Number of Other Dispositions	21

DIVISION OF EMPLOYMENT AND TRAINING

The Employment and Training Division in the Criminal Bureau provides the Department of Employment and Training (D.E.T.) with legal assistance and representation necessary to enforce the Massachusetts employment laws. The Division also manages appellate matters arising from decisions granting or denying employment compensation benefits to individual claimants.

The Division prosecutes employers who fail to comply with the law that requires them to pay a quarterly contribution to the Unemployment Compensation Fund as well as prosecutes the individuals who collect unemployment benefits while gainfully employed and earning wages or who otherwise collect benefits when they are ineligible. The Division also represents the Commissioner of D.E.T. in cases brought against him and also on his behalf.

In fiscal year 1992, the Division received 283 new cases, disposed of 256 cases and arrested 173 individuals. Nearly one million dollars in restitution was collected.

Whenever an employer fails to pay unemployment contributions owed to the Department of Employment and Training or an individual is found to be collecting unemployment benefits while gainfully employed and earning wages, the matter is subject to prosecution.

Consistent with Attorney General Scott Harshbarger's belief that unemployment fraud merits treatment consistent with other crime against the Commonwealth, several individuals have been sentenced to terms of incarceration. Particularly of note were the following cases:

William Fields of Fairhaven, was charged in April of this year with larceny over $250 and with forgery in connection with his receipt of unemployment checks under the name of his brother, David Fields, who was serving prison time at MCI-Bridgewater. William Fields collected $3,675, over a 15 month period, in unemployment checks that were not due to him. He was found guilty and sentenced to 90 days in the House of Correction, 30 days to serve, the balance suspended for two years, and ordered to pay restitution in the amount of $3,675.

In early 1991, Joseph DeCarlo of Hyde Park, was charged with larceny over $250 for taking $10,000 in unemployment benefits by claiming the funds with false social security numbers. He was sentenced to two years in the House of Correction.

In a case involving the cashing of checks stolen from DET, six defendants were charged in November, 1991, with 154 counts of larceny over $250, uttering and receiving stolen property involving $22,856. Two of those defendants, Steven Tucker of Dorchester, and Nathaniel Davis, also of Dorchester, were sentenced to two and one-half years in the House of Correction, eight months to serve, the balance suspended for five years, and ordered to pay restitution in the amount of $22,856.

Within the last year, numerous employers have been ordered to pay restitution for amounts in default ranging from $3,000 to $125,000. The majority of cases have resulted in guilty findings and the imposition of restitution. From July, 1991 to June, 1992, the Division processed 943 employer cases, 903 employee cases, and collected nearly $1 million from unemployment fund abusers.

A major initiative undertaken by DET that resulted in the collection of $156,173 was the Amnesty Program. The Amnesty Program, which ran from September 18, 1991 to December 20, 1991, was designed to clear a backlog of cases that accumulated in the late 1960's and grew dramatically in the 1980's. The program gave nearly 1,000 employers and employees the opportunity to fulfill their legal responsibility, while giving them the benefit of a 50 to 90 percent reduction on the interest accrued on the amount they owed.

At the conclusion of the amnesty period, the Attorney General's office began a major crackdown on defaulters. In May of this year, for example, 13 former employers who failed to contribute to the state's Unemployment Trust Fund and did not participate in the Amnesty Program were arrested or voluntarily turned themselves over to authorities. The amount allegedly owed by the defendants totalled nearly $63,000. All of the defendants are presently engaged in paying back the amount. Due to such sweeps of defaulters, the Division has removed 50 percent of the outstanding warrants that existed before the Amnesty Program.

The Assistant Attorney General who prosecute Division of Employment and Training cases are Brian Burke, who serves as Division Chief, Elizabeth Foley, Paula Niziak, Patricia Preziosa and Beverly Ward.

DIVISION OF EMPLOYMENT AND TRAINING

JULY 1, 1991 - JUNE 30,- 1992

Cases Received:	283 -	12 Appeals 219 Larceny Claims Cases 51 Employer Tax Cases 1 Commissioner Action
Indictments:	7	
Arrests:	173	
Restitution Collected:		$746,619.66
Court Appearances:		300 courts on 871 cases
Cases Disposed Of:		256
Cases Closed:		210 - 7 Appeals 85 Larceny Claims Cases 118 Employer Tax Cases

Amnesty Program Results:

The effort was successful in contacting 509 people out of 1,000 (329 employer, 180 employee). A total of $156,173.23 was collected.

There are a total of 310 cases which are ten years or older in which less than $5,000.00 is owed to the Commonwealth. A plan has been approved to dispose of these cases.

ECONOMIC CRIMES DIVISION

INTRODUCTION

With limited investigative and prosecutorial resources, the Economic Crimes Division began the process of defining an agenda consistent with the principles outlined in the Attorney General's Action Plan. Recognizing the societal costs of fraud upon the government, and working closely on related investigations pursued by both the Public Integrity Division and the Narcotics and Organized Crimes Division, the Tax Prosecution Unit initiated several major tax evasion and failure to file cases, obtained significant fines and restitution orders and, where appropriate, sentences of incarceration to serve as a general deterrent to tax fraud. Responding to the widely-perceived crisis in insurance rates, attorneys in the Economic Crimes Division worked with the newly-created Insurance Fraud Bureau to initiate several prosecutions involving frauds upon automobile insurers and workers compensation carriers.

Working with attorneys from both the Consumer Protection and the Public Charities Divisions of the Public Protection Bureau, the Economic Crimes Division brought criminal cases - and obtained significant sentences of incarceration - against con artists bilking consumers and businesses. And with a special emphasis on crimes against the elderly, the Economic Crimes Division prosecuted several attorneys and investment advisors who preyed upon senior citizens and absconded, in some cases, with a retiree's entire life savings.

In FY93, the Division looks forward to additional investigative and prosecutorial resources so that the efforts outlined above may be expanded and that additional categories of crimes may be addressed.

TAX PROSECUTION UNIT

In FY92, the Tax Prosecution Unit obtained convictions in 21 cases involving tax evasion and wilful failure to file income tax, meals tax and/or sales tax returns. Of these dispositions, 7 defendants were sentenced to terms of incarceration in state prison or house of correction. The Tax Prosecution Unit also obtained a total of $321,300 in fines payable to the Commonwealth, including one case in which the fine, $175,000, represented the largest single fine ever imposed in a tax prosecution. In all, the prosecutions initiated and/or disposed in FY92 represented tax liability to the Commonwealth totalling $1,477,452.

Among the most significant cases brought by the TPU are the following:

Conviction of a major national corporation for failure to file and pay sales tax. The corporation was ordered to pay a fine of $175,000 in addition to its tax liability.

Conviction of a tax protester on 4 counts of income tax evasion and 2 counts of non-filing returns. The defendant was sentenced to 4 1/2 to 5 years in state prison.

Indictment of a city council president and an attorney on charges involving the failure to pay taxes on more than $1 million earned by the council president.

Indictment of a restaurant owner for 56 counts of meals tax evasion.

Indictment of school committee member/attorney on 5 counts of failing to file income tax returns.

The assistant attorneys general who handled TPU prosecutions in FY92 are Andy Zaikis, Mary Phillips, John Van Lonkhuyzen, Myles Slosberg, and John Ciardi.

INSURANCE FRAUD UNIT

For much of FY92, the Insurance Fraud Unit consisted of Assistant Attorney General Jim Bryant, paralegal Dan Ciccariello and secretary Nicole Ricci. The primary focus has been on automobile insurance fraud cases investigated by the Insurance Fraud Bureau ("IFBII), the Governor's Auto Theft Strike Force ("GATSFII), and private insurers. For FY93, funding has been obtained to initiate a similar effort focusing on workers compensation fraud. AAGs Jennifer Ferreira and Mike Cullen have assumed those responsibilities.

During FY92, the Unit received 61 referrals of suspected automobile insurance fraud from IFB, GATSF, and private insurers. In addition, 6 cases of suspected workers compensation fraud were received. Despite the fact that FY92 was a start-up year for both our unit and IFB, 13 separate cases resulted in either indictments in Superior Court or criminal complaints in a variety of district courts. Most of these are still pending, but 4 disposed cases resulted in convictions.

Among the significant cases prosecuted in FY92 are the following:

An insurance company claims adjuster was indicted on 6 counts each of larceny and fraudulent entries in corporate books for a scheme whereby he created files for payment on fictitious automobile accident claims.

A New Hampshire man was indicted for staging a series of choking accidents in restaurants for purposes of filing several fraudulent insurance claims.

A Worcester insurance agent was indicted for collecting more than $700,000 in automobile insurance premiums without remitting the premiums to the insurer, resulting in the cancellation of insurance coverage for many of the agency's clients.

Thirteen residents of Middlesex County were indicted for participating in a scheme to stage phony automobile accidents and personal injury claims in Cambridge and Somerville. This investigation, which has identified more than $100,000 in fraudulent payments, is continuing.

FINANCIAL ABUSE OF THE ELDERLY

In cooperation with the staffs of Secretary of State's Securities Enforcement Division and the Commonwealth's Board of Bar Overseers, the Economic Crimes Division has prosecuted several major cases involving financial abuse of elder Americans. Among the cases initiated or disposed in FY92 are the following:

A Newton attorney was indicted on 13 counts of larceny, 8 counts of forgery and 4 counts of embezzlement by a trustee as a result of schemes to defraud several clients of funds totalling more than $360,000.

A Revere financial consultant was indicted on 16 counts of larceny and one count of securities fraud for a scheme whereby he defrauded an 80 year old widow of the $3,000,000 she inherited through her husband's estate.

A Boston stockbroker was indicted on 6 counts of larceny and one count of securities fraud for separately defrauding a widow, a retired state employee, and a nun of sums totalling more than $500,000.

A Salem attorney was indicted on 5 counts each of larceny and embezzlement by a fiduciary for separate crimes involving the embezzlement of the proceeds from the sale of an elderly couple's house, and the embezzlement of life insurance proceeds from an 84 year old widow.

A Weymouth man was convicted for defrauding an 87 year old Quincy man of more than $20,000, and was sentenced to a one year term in the house of correction.

A Natick stockbroker was convicted of securities fraud and larceny for his scheme to defraud elderly investors of more than $180,000. The defendant received sentences totalling 10 to 15 years in state prison.

A Wrentham attorney was indicted on 7 counts of larceny and 6 counts of embezzlement by a fiduciary for separate schemes by which he stole more than $200,000 from primarily elderly clients.

An Acton attorney was indicted for multiple charges of larceny, forgery and unauthorized practice of law involving a total of $484,000 embezzled from 16 clients, 6 of whom were elderly.

CONSUMER AND CHARITIES FRAUD

The Economic Crimes Division in FY92 began to work with the Public Protection Bureau's Consumer Protection Division and Public Charities Division to utilize criminal prosecutions in cases where traditional civil remedies had been ignored by con artists. The two most significant cases were the following:

Four individuals were indicted on charges of larceny from several small business owners in connection with a telephone solicitation

scam. Two of the defendants posed as police officers or Registry of Motor Vehicles officials in an effort to solicit funds for a police yearbook.

A Newton man was convicted of 17 counts of larceny and one count of criminal contempt for fraudulently obtaining broker fees after promising refinancing assistance to homeowners and businesses facing foreclosure. The defendant was sentenced to serve a 3 to 5 year state prison sentence and was ordered to pay over $30,000 in restitution to 56 known victims.

FIDUCIARY EMBEZZLEMENTS

In addition to crimes against the elderly, the Economic Crimes Division pursued other cases against professionals who violated fiduciary relationships and embezzled funds entrusted to them by clients. Among the more significant cases were the following:

A former senior vice-president of a Connecticut-based securities brokerage firm was indicted on 11 counts each of larceny and securities fraud for misappropriating more than $450,000 from eleven individual clients.

The former chief financial officer of a local private college was convicted and sentenced to 9 to 10 years in state prison for embezzling more than $1,000,000 from the school.

An East Boston stockbroker was convicted of larceny and securities fraud in connection with the theft of $45,000 from a single client.

A Cape Cod real estate broker was indicted on charges of larceny for misappropriating more than $160,000 in funds provided by real estate investors seeking to purchase property the broker in either claimed to own or for which he purported to act as selling agent.

A Cohasset attorney was indicted on larceny charges involving his embezzlement of $217,000 from four trusts he managed as trustee.

A Cohasset man was indicted for larceny in connection with a fraudulent investment advisor firm he used to embezzle more than $140,000 from a Randolph resident and a Quincy couple.

OTHER CRIMES

While focusing on frauds upon the Commonwealth and uniquely vulnerable victims, the Economic Crimes Division prosecuted a number of other offenses worthy of mention:

A Lynn man was indicted on arson and insurance fraud charges involving a fire that caused $130,000 worth of damage to a Lynn business and which resulted in injuries to two Lynn firefighters.

11 Massachusetts and New Hampshire residents were indicted for a series of thefts of copper ground cable from the Riverside Branch of the MBTA's Green Line in Newton. The thefts cost the MBTA more than $200,000 in repairs.

A Lynn woman was indicted for arson and insurance fraud after setting fire to her three-decker apartment building located in a residential neighborhood.

An East Boston woman was indicted on 2 counts of larceny and 6 counts of forgery in connection with the embezzlement of more than $100,000 from the firm she served as executive secretary.

A Waltham man was convicted and sentenced to 5 to 10 years in state prison for his participation in a ring which sold more than $50,000 worth of computer equipment stolen from several universities, colleges and prep schools. A co-defendant was sentenced to serve a 3 1/2 to 5 year state prison sentence in connection with the same scheme.

A New Bedford woman was convicted and received a state prison sentence for embezzling almost $90,000 from a state-financed, non-profit human services corporation in Roxbury.

A New York resident was indicted for embezzling more than $100,000 from Boston's Museum of Fine Arts.

A Scituate man was indicted on charges of larceny and false corporate book entries in connection with his embezzlement of more than $1,000,000 from his employer, a Hanover automobile dealership.

The former chief financial officer of a Boston software firm was indicted for stealing more than $650,000 from his employer.

The assistant attorneys general who prosecuted Economic Crimes Division cases include Marty Healey, who served as Division Chief until May, 1992, Mary Phillips, John Van Lonkhuyzen, John Ciardi, Mary Beth Downing, Abbe Ross, Howard Brick, Mark Smith, Myles Slosberg, and Alex Nappan.

MEDICAID FRAUD CONTROL UNIT

INTRODUCTION

The Massachusetts Medicaid Fraud Control Unit (MFCU) was established in 1978 as a result of federal legislation authorizing individual states to investigate and prosecute waste, fraud and abuse within the Medicaid Program. The Massachusetts Unit has been certified annually since that time and receives 75% of its operating budget from the federal government. The total MFCU budget for fiscal 1991 was approximately $1.3 million.

Congress continues to fund the Massachusetts Unit because of its commitment to prosecute providers who abuse the system and take advantage of those most vulnerable the poor and elderly who depend on Medicaid for health care. During the previous 12 months the Massachusetts Medicaid Program administered nearly $3 billion to over 500,000 recipients.

The focus of this Unit continues to be criminal prosecution and civil enforcement of health care
providers who defraud the Commonwealth's Medicaid Program or who abuse and neglect patients. Investigating and prosecuting Medicaid provider fraud is a major responsibility in Massachusetts, as the state Medicaid Program is the largest line item in the state budget. The Massachusetts medicaid budget is ranked sixth largest in the nation.

The providers who comprise the Commonwealth's Medicaid Program are a diverse group. Those who receive reimbursement for medical goods and services range from institutions such as nursing homes and hospitals to individual health practitioners such as physicians, psychiatrists, dentists, pharmacists, and psychologists. Also participating are outpatient clinics and home health agencies, ambulance and other transportation companies, laboratories and suppliers of durable medical equipment. Ownership of health care providers range from large multi-state corporations to small family proprietorships and individual professional corporations.

FISCAL 1992 RECOVERIES AND PROSECUTIONS

The Massachusetts MFCU reached the largest settlement in its 14-year history in fiscal year 1992 when it entered into a $12 million civil agreement with a well-known Boston children's hospital. Franciscan Children's Hospital and Rehabilitation Center agreed to restitution and free pediatric care as a result of over-generating medicaid revenue over a period of approximately five years. Part of the unprecedented settlement calls for the hospital to provide free pediatric services by mobile van to some of Boston's most needy neighborhoods. This agreement is an example of the type of civil enforcement mix the unit has undertaken along with criminal prosecutions.

During Fiscal 1992 the unit also returned 36 indictments, including 7 convictions.

In all, the unit recovered nearly $13 million. During this period, the unit indicted a pediatrician for larceny and filing false medicaid claims totalling nearly $250,000.

Also indicted were a Lawrence emergency room physician and his walk-in clinic, a Methuen taxi cab company and its owners and a former Brighton nursing home owner and administrator.

PATIENT ABUSE REFERRALS AND PROSECUTIONS

MFCU is also charged with the responsibility of investigating and prosecuting patient abuse in Massachusetts long term care facilities. The unit has established a multi-disciplinary team to investigate and prosecute patient abuse cases. Abuse consists of physical, emotional and financial as well as neglect of our elderly population. During fiscal 1992 over 200 matters were referred to MFCU. Of those, fifty-six (56) resulted in criminal investigations. Four (4) have resulted in convictions and a number are under active investigation with the exception of criminal complaints being issued.

The Attorney General's office continues to evaluate the Medicaid Unit to be more responsive to abuse in this area. A consistent interdisciplinary approach with the Consumer Protection Division is a major initiative begun in fiscal 1992 to address institutional abuse of the elderly.

IV. SUMMARY CHART
(Fiscal 1992)

CRIMINAL ACTIVITY			
A.	INDICTMENTS	36	
B.	CONVICTIONS	7	
C.	RECOVERIES	$6,800	
CIVIL ACTIVITY			
A.	INDIVIDUAL RECOVERIES	25	
B.	OVERPAYMENTS RECOVERED	$10,000,457.48	
C.	PNA RECOVERIES	$5,999.26	
D.	CIVIL DAMAGES ASSESSED	$19,750	
E.	OTHER PENALTIES ASSESSED		$82,185.20
	TOTAL CIVIL RECOVERY		$12,849,891.94

NARCOTICS AND ORGANIZED CRIMES DIVISION

In the fiscal year ending July, 1992, the Narcotics and Organized Crime Division successfully arrested, prosecuted and convicted large-scale drug traffickers in Barnstable, Essex, Middlesex, Norfolk, Plymouth, and Suffolk counties, most of whom are now serving minimum-mandatory sentences in state prison. The majority of their arrests and prosecutions involve charges of cocaine trafficking or marijuana smuggling. State Police officers assigned to the Attorney General's Narcotics and organized Crime Division in many instances investigated these cases in cooperation with local police departments, other State Police officers assigned to the offices of the eleven District Attorneys, and with the Drug Enforcement Administration.

In addition to violations of the Controlled Substances Act, the Narcotics and Organized Crime Division of the Criminal Bureau investigates other forms of organized criminal activity, including murder, arson, armed robbery, gaming, loan sharking, receiving stolen property ("fencing") and prostitution. The eight Massachusetts State Police officers assigned to this division concentrate their investigations on organized and disciplined criminal enterprises whose activities span county lines, and therefore may exceed the reach of local law enforcement authorities.

Five Assistant Attorneys General specialize in prosecuting Narcotics and Organized Crime cases, although many of the Criminal Bureau's

Assistant

Attorney's General handle a caseload which includes prosecutions in this area. These cases are supervised by an Assistant Attorney General, and Chief of the Division, who oversees both investigations and pending prosecutions.

The Office of the Attorney General has expanded its efforts to seize and forfeit the assets of drug dealers which are traceable to narcotics activities. In January, 1991 the Attorney General added two full-time Assistant Attorneys General to his Narcotics and Organized Crime Division to handle exclusively civil forfeiture proceedings, with the assistance of a full-time financial investigator. In fiscal year 1992, this Asset Forfeiture Unit successfully forfeited to the Commonwealth over $274,000 in case, in addition to numerous pieces of real property and motor vehicles.

The statistics of the division are summarized below:

I. PROSECUTIONS

Number of Arrests	90
Number of Cases Initiated	34
Number of Defendants	58
Number of Indictments	138
Number of Cases Disposed	56
Number of Trials	15
Number of Pleas	40
Other	1

II. NARCOTICS SEIZED

Cocaine	over 4 kilograms (4,000 grams)
Marijuana	200 pounds
Heroin	100 packets
Methadone	38 grams
PCP	Small quantity

III. ASSET FORFEITURE

Forfeiture Cases filed:		16
State Forfeiture Cases:	Disposed:	7
Out-of-State Forfeitures:	Disposed:	3
Federal Forfeiture Cases:	Disposed:	2

A. ASSETS SEIZED

Vehicles:		14
Real Property:		7
Computer:		1
Monies:	$357,882.80	

B. AMOUNT FORFEITED TO COMMONWEALTH OF MASS.

Monies:	$274,081.36
Vehicles:	3 (valued at $19,525)

IV. OTHER

Approximately 1/2 million dollars in stolen jewelry, computers, golf equipment, electronics, and construction equipments was recovered by the Massachusetts State Police assigned to the Office of the Attorney General. Eleven (11) firearms were also seized.

THE MASSACHUSETTS ENVIRONMENTAL STRIKE FORCE

I. THE STRIKE FORCE:
An Inter-Agency Enforcement Tool

The Massachusetts Environmental Strike Force is a relatively unique enforcement tool used in the investigation and prosecution of the Commonwealth's environmental enforcement efforts. Through the cooperation of the Attorney General, the Secretary of Environmental Affairs,the Department of Environmental Protection, the Department of Fisheries, Wildlife, and Environmental Law Enforcement, and the Metropolitan District Commission, the ESF brings attorney, technical, and police resources under a single umbrella. The ESF thus provides the legal, scientific, and investigative expertise necessary to identify environmental violations, evaluate their impact on the public health, safety, and the environment, and develop the evidence necessary to assess responsibility.

The legal resources devoted to this effort within the Attorney General's Office since 1991 are unprecedented in the history of the Commonwealth. Three prosecutors from the Criminal Bureau have been dedicated full-time to Strike Force efforts. In addition, nine Environmental and Metropolitan police officers have been stationed in the Criminal Bureau, forming a unitary ESF police force. Finally, an increased emphasis on civil enforcement has resulted in increased resources from the Attorney General's Environmental Protection Division being devoted to ESF cases.

II. EXPANDING the STRIKE FORCE CONCEPT

The increase in both resources and inter-depart- mental coordination reflects the new ESF philosophy to aggressively enforce the environmental laws across the board. The Strike Force has pursued not only the "marquee" cases involving large corporate offenders, but also those smaller offenders who, taken together, pose a significant threat to both the public health and environment. The Attorney General has also expanded the "strike force concept" through closer coordination with all federal, state, and local agencies with responsibility for some aspect of environmental protection. As a result, the Strike Force's enforcement efforts have virtually covered the spectrum of serious environmental violations, from illegal transportation and dumping of hazardous wastes, to water pollution, solid waste dumping, improper lead paint removal, exposure to hazardous substances in the workplace, illegal harvesting of
shellfish from contaminated waters, unlicensed application of pesticides, and septage dumping.

III. PICKING UP the PACE of PROSECUTION

The pace of criminal prosecutions has dramatically quickened. In the past year, criminal charges were filed in twelve cases around the state, for an average of one new case a month. This may be compared to the total of twenty new cases brought in the four years before Attorney General Harshbarger took office. In essence, the Strike Force has doubled the pace of criminal environmental enforcement. In addition to relying on inter-agency leads and coordination, Strike Force police have executed criminal search warrants and engaged in aerial and ground surveillance to develop criminal cases. Prosecutors have used both grand jury investigations and, in a departure from past practice, have brought complaints in the district courts for quick response to some of

the simpler, but still significant, environmental offenses.

Criminal convictions which have been obtained in the past year include convictions for:

*Illegal alteration of a wetland (thirty day suspended sentence and $42,000 fine)

*Illegal transportation and dumping of hazardous waste in a residential area of Fall River ($15,000 fine, $6,500 restitution for cleanup, probation and community service imposed)

*Illegal operation of asbestos waste transfer station ($10,000 fine, probation)

*Illegal application of pesticides by West Springfield exterminator ($2,700 fine)

*Illegal removal of asbestos from apartment building (defendant plead to sufficient facts)

*Illegal discharge of asbestos laden water into the Charles River (case brought jointly with U.S. Attorney's Office--four month federal sentence, $125,000 fine)

Criminal cases presently pending include:

1. Com. v. Karl Avancean: Owner of Worcester auto body shop indicted for three felony violations of state's hazardous waste laws.

2. Com. v. Wayne F. Bell: Cape man charged with illegal disposal of hazardous waste and solid waste in a residential area of Foxborough.

3. Com. v. James K. Bounakes and Michael G. Reynolds: Two men indicted on charges of illegal harvesting of shellfish in contaminated area of Taunton River in Somerset.

4. Com. v. Edna Gilchrist and Bruce Adams: Owner of office park and building manager indicted for the illegal disposal of waste related to the alleged dumping of human waste directly into the Chicopee River.

5. Com. v. Chung Kendrick: Wakefield landlord charged with illegal removal of lead paint from apartment unit.

6. Com. v. Roger Knowles, Anton Martin, Polymerine, Ltd.: Company, company president and employee indicted on several charges of violating Massachusetts hazardous waste storage and transfer laws. A fourth defendant, a company in New Bedford, found guilty on four charges and fined $400,000 on Feb. 28, 1992. Three co-defendants' cases still pending.

7. Com. v. John Lemieux, George Winderlick, Michael Winderlick, Steven Winderlick, Robert Chapman, and Shawn Martin: Six South Dartmouth men charged with illegal harvesting of shellfish in contaminated area of New Bedford harbor.

8. Com. v. Carl A. Trant, Trant Equipment and Scrap Iron Company, Inc., and Valley Holding Company, Inc.: Brimfield man and companies indicted on charges of operating waste tire dump. Case pending.

IV. THE FUTURE: DESIGNING STRUCTURAL CHANGE

Attorney General Harshbarger has gone beyond discrete prosecutions in an attempt to make important structural changes to improve the Commonwealth's ability to enforce its environmental laws. The Attorney General has filed the Environmental Trust Fund and Forfeiture Act which will permit law enforcement officials to seize assets and proceeds of
environmental crimes and channel them into a special fund designed to increase environmental enforcement at both the state and local levels; the Environmental Endangerment Act which will impose longer sentences and larger fines for crimes which actually cause physical harm to individuals or natural resources, and which will permit the courts to order offending organizations to perform environmental audits to address the causes of polluting conduct; and a bill designed to strengthen and harmonize the state's existing environmental laws. Finally, in an effort to invigorate the enforcement of the environmental laws at the local level, the Attorney General has brought together representatives of state and federal environmental agencies and the private sector to provide training to the district attorneys and local
police and fire officials in the investigation and prosecution of environmental crime.

PUBLIC INTEGRITY DIVISION

Fiscal year 1992 reflected significant progress in the Attorney General's efforts to investigate and prosecute crimes involving public corruption.

The Public Integrity Division had under indictment over 30 individuals in FY 92 for a broad array of offenses, including conflict of interest, bribery, larceny, tax evasion, forgery, perjury, violation of civil service laws, and filing false claims and false reports with the Commonwealth.

In addition the Division disposed of over 19 cases by plea or trial, resulting in committed time for defendants in both the House of Correction and state prison. Most notably, the Commonwealth obtained orders of restitution in excess of $400,000 for funds unlawfully stolen from the Commonwealth agencies or municipalities.

In January, 1992, the Public Integrity Division was reconstituted to include five full-time attorneys, one financial investigator, and three state police officers. Since January, 1992, the division has secured over 17 indictments in public corruption/white collar crime cases.

The division continues to work closely with representatives of other state investigative agencies including the Inspector General's office, the State Ethics Commission, the Department of Revenue, the Office of Campaign and Political Finance and the Office of State Auditor. Over the course of the year, the Division has expanded its efforts to coordinate investigative resources. A group consisting of various watchdog and regulatory state agencies was formed this year to advise the Attorney General on public integrity issues. In addition, the division maintains working relationships with federal and local law enforcement.

The focus of the cases prosecuted in the past year has been in two areas: on public officials and employees of, state, county and municipal government who have benefited unlawfully from their positions or who have acted in conflict of interest.

The variety of charges brought in fiscal year 1992 further underscores the efforts being made to successfully prosecute public corruption offenses.

CASES INDICTED BY PUBLIC INTEGRITY DIVISION

1/92 Commonwealth v.
(State House Court Officer)
Larceny

1/92 Commonwealth v.
14 cts. Campaign Finance Violations

1/92 Commonwealth v.
(PRIM Executive Director)
2 cts. False Tax Returns

1/92 Commonwealth v.
(PRIM Director of Finance)
4 cts. Larceny; 3 cts. False Tax Returns;
12 cts. False W-2s'

3/92 Commonwealth v.
(Lottery Employee)
10 cts. Larceny; 1 ct. Conspiracy

3/92 Commonwealth v.
6 cts. Larceny

3/92 Commonwealth v.
(Executive Director, Methuen Housing Authority)
2 cts. Larceny

3/15/92 Commonwealth v.
2 cts. Larceny

4/92 Commonwealth v.
(Business Manager, Ashburton School District)
6 cts. Larceny

6/92 Commonwealth v.
(Springfield City Councilor)
4 cts. Failure to File Tax Returns

6/92 Commonwealth v.
(Springfield School Committee)
5 cts. Failure to File Tax Returns

7/1/91 - 12/30/91

8/91 Commonwealth v.
(Former EOCD Employee)
Larceny
Filing False Claims and False Reports

8/91 Commonwealth v.
(Former DOR Auditor)
1 ct. Filing False Tax Returns and filing false claims

8/91 Commonwealth v.
Violation of c. 268A, § 2

8/91 Commonwealth v.
(Melrose Police Lt.)
1 ct. Forgery
1 ct. Civil Service Violation

10/91 Commonwealth v.
(Court Clerk)
Larceny
Alteration of Public Records
Obstruction of Justice

10/91 Commonwealth v.
(Three MCAA Parking Garage Employees)
Larceny

11/91 Commonwealth v.
(Chelsea Businessman)
1 ct. Larceny

11/91 Commonwealth v.
(Somerville Firefighter)
6 cts. Perjury

TOTAL DEFENDANTS 6/1/91 - 12/30/91: 10

PUBLIC PROTECTION BUREAU

Health Care Policy Development

In 1992, the Public Protection Bureau increased its focus on health care policy issues. Bureau personnel conducted a continuing series of meetings with participants in the health care industry, including hospitals, insurers, managed care providers, physicians, and community health centers. Bureau personnel also met on a continuing basis with consumer and employer groups concerned about health care cost and access issues. Finally, bureau personnel began to develop informal consulting relationships with academics from public health and medical schools in the area.

These meetings (along with policy research and discussions conducted internally by the Bureau) led to the definition of a health policy "blueprint" for the Attorney General. This document is designed to define a direction for long term reform which should, in turn, provide a framework for continuing development of positions on health care issues by the Attorney General in 1993. The priority areas identified are the following:

* Support for a national solution to the problem of the uninsured.
* Insurance market reform.
* Relief for non-group health insurance purchasers.
* Support for industry partnerships.
* Review of hospital plant and equipment investment.
* Fraud and abuse by providers.
* Support for managed care with sensitivity to concerns of physicians and patients.
* Availability of information on cost and quality.
* Urban health issues.

LEAD POISONING TASK FORCE AND OTHER LEAD INITIATIVES

In late 1991, the Attorney General convened a Lead Poisoning Task Force to address some of the complex and difficult issues surrounding the state's lead paint laws and regulations. Members of the Task Force included representatives of state and federal agencies, local boards of health, the real estate, insurance and deleading industries and advocacy groups, attorneys and others. The Task Force formed four subcommittees for the purpose of exchanging viewpoints and information concerning identified issues. These subcommittees: Identification and Response to Children at Risk, Residential Removal and Disposal of Lead, Nonresidential Leading Removal and Disposal, and Funding and Liability Issues met on a regular basis throughout the winter and spring of 1992. As a result of the discussions which took place, each of the subcommittees proposed a detailed analysis of the issues discussed as well as suggestions for changes in the laws, regulations, enforcement, education and outreach. These findings and recommendations were combined and published in the Report of the Attorney General's Lead Poisoning Task Force in August of 1992.

Following publication of the Report the Task Force met again in the fall to discuss the Report and plan for implementation of many of the proposals. As a result, two implementation groups were created and commenced to meet on a regular basis.

As another outgrowth of the Task Force, the Bureau began to receive and investigate numerous complaint from many different sources concerning alleged violation of the lead laws by deleaders, lead inspectors, and property owners. As of the end of 1992 a number of investigations were ongoing and the announcement of several indictments, civil complaints and agreed settlements appeared imminent.

ANTITRUST DIVISION

The Antitrust Division enforces federal and state antitrust laws prohibiting anti-competitive activity. The U.S. Supreme Court has described these laws as the "Magna Carta" of our free enterprise system. Enforcement of these laws protects consumers from the adverse economic effect of price-fixing, boycotts, monopolization and other similar restraints of trade. Enforcement of these laws also protects businesses, particularly small businesses, by curbing the kind of anti-competitive activity that hampers the ability of a business to compete on an equal basis in the marketplace.

The Division prosecutes violations that principally affect Massachusetts consumers. The Division also joins forces with other states to prosecute violations that have a negative impact on consumers and businesses in multiple states including Massachusetts. Through the National Association of Attorneys General, the Division coordinates it activities with those of other states and with the activities of federal antitrust enforcers.

Multistate Insurance Antitrust Litigation

The Commonwealth is a party along with 19 other states and various private parties in these antitrust actions in the United States District Court for the Northern District of California against a total of more than thirty insurance companies, reinsurers, intermediary brokers, and trade associations. The complaints allege that defendants illegally manipulated the market for commercial general liability (CGL) insurance, the insurance purchased by most businesses, public agencies, and non-profit organizations to cover their liability to third parties for personal injuries and property damage. Treble damages for injuries to public entities are sought, as well as extensive injunctive relief.

The United States Supreme Court granted certiorari to review the decision of the Unites States Court of Appeals for the Ninth Circuit which reversed and remanded the District Court (Schwarzer, J.) decision dismissing the plaintiff's actions on McCarran-Ferguson, state action, comity, and pleading grounds. The Supreme Court granted certiorari on two issues in the case: (1) whether the United States may enforce United States antitrust laws against foreign companies for action in a foreign country that has effects in the United States (international comity) and (2) the scope of the McCarran-Ferguson Act, which exempts certain conduct of insurance companies from prosecution under the antitrust laws.

The Division has taken a leading role in settlement negotiations as well as the drafting of the states' international comity brief which, along with the states' McCarran-Ferguson brief, was filed on December 23, 1992. The Division will also take an active role in the preparation for the oral argument before the United States Supreme Court, to take place in early 1993. (Alpert, Weber)

In re Clozapine Antitrust Litigation

This case involved a multi-state lawsuit against Sandoz Pharmaceuticals Corp. and Caremark Corp. alleging illegal tying in violation of section 1 of the Sherman Act and monopolization under section 2 of the Sherman Act. The states' antitrust lawsuits were based on Sandoz's and Caremark's marketing of the anti-schizophrenia drug, Clozaril. Sandoz refused to sell the drug unless the buyer also agreed to purchase a package of blood monitoring and blood testing services provided exclusively by Caremark. The Division was part of the eight member Case Management Committee that initiated and organized the litigation of this case.

The case was settled in September 1992 and was joined by all states in the United States and the District of Columbia. Sandoz and Caremark agreed to pay purchasers of the drug, including state agencies, $13 million plus attorney's fees and costs. In addition, $3 million will be paid to the National Organization of Rare Diseases to be used in the treatment of new patients with Clozaril. The defendants also agreed to provide a 15% reduction in the wholesale price of Clozaril to at least 2000 patients on social security disability income. The defendants are further prohibited from reinstating the tie between Clozaril and the blood monitoring and blood testing services provided by Caremark.

The United States District Court for the Northern District of Illinois approved the settlement on Nov. 24, 1992. (Scibelli, Weber)

Blue Shield - Baystate Merger

The Attorney General agreed not to make an antitrust challenge to Blue Shield's merger with Baystate Healthcare, a failing HMO serving over 350,000 subscribers in the Commonwealth. Pursuant to the agreement between the Attorney General and Blue Shield, Blue Shield agreed to contribute $2 million to provide free health insurance to uninsured children unless its operation of Baystate proves financially unsuccessful. Further, for two years, Blue Shield is prohibited from merging with any other health care insurer or HMO if the Attorney General finds that the merger adversely affects competition. Blue Shield also agreed to fund a study to determine the causes of Baystate's failure and to aid the Attorney General in monitoring the competitive effects of the new health care financing law, G.L. c. 495, by responding to inquiries from the Attorney General within two business days. (Weber, Scibelli, Alpert).

Commonwealth v. Cahill, et al.

In this federal court action, filed by the Division in August of 1988, the Commonwealth alleged that twenty-four Springfield obstetrician/gynecologists conspired to boycott Blue Shield of Massachusetts in violation of state and federal antitrust laws. The suit sought injunctive relief and the imposition of civil penalties against twenty-four defendant physicians.

In 1992 the remaining eleven defendants entered into consent judgments with the Commonwealth: enjoining violations of the antitrust laws; containing agreements to withdraw letters of resignation from Blue Shield and to notify the Commonwealth prior to submission of any future letters of withdrawal; and providing a total recovery to the Commonwealth of $140,000 in money and free medical services to low income women. In total, the Commonwealth recovered over $300,000 in cash payments and free medical services from the twenty-four defendants. (Weber, Davies, Alpert)

Mitsubishi

On January 15, 1992, the United States District Court in Baltimore, Maryland entered a Final Judgment in this case approving the settlement negotiated between the states and Mitsubishi Electronics. The terms of the settlement require Mitsubishi Electronics to refund $7.95 million to consumers to settle charges that it unlawfully fixed the retail prices of certain Mitsubishi and MGA brand televisions. The settlement resolved charges that Mitsubishi had attempted to enlist electronics retailers in a nationwide conspiracy to fix retail prices and had obtained agreements from dealers not to sell below Mitsubishi's retail price. Under the terms of the settlement, more than 11,000 Massachusetts consumers were eligible to receive refunds for products purchased in 1988. (Weber, Davies, O'Neill, Botte)

Getty Petroleum Corp. v. Scott Harshbarger

On September 18, 1992, in anticipation of an enforcement action by the Division, Getty Petroleum Corp. filed a complaint in United States District Court for the District of Massachusetts requesting declaratory judgment and injunctive relief regarding the applicability of G.L. c. 93E to Getty's policy of requiring dealers to remain open certain hours per day and days per week. G.L. c. 93E prohibits lessors to require lessees to stay open certain hours per day or days per week. On the Commonwealth's motion to dismiss, Judge Tauro dismissed Getty's preemption claim pursuant to the Younger abstention doctrine, and abstained from making a decision on Getty's due process claim, pending resolution of the Commonwealth's state court action. (Matlack, Alpert, Nasca, Weber, Wilkins [Govt.])

Commonwealth v. Getty Petroleum Corp.

On September 23, 1992, the Division initiated this state court action in Suffolk Superior Court. The Commonwealth alleges that Getty's policy of forcing dealers to stay open certain hours per day and days per week violates G.L. c. 93E. (Matlack, Alpert, Nasca, Weber)

Commonwealth v. J.F. Inc., Ludlow Enterprises, Inc., L.A.Z.I. Inc., et al.

In 1988 the Division brought an antitrust action against various liquor stores in Western Massachusetts for agreeing to fix prices by jointly advertising the same prices. In 1992 settlements and signed consent judgments were entered with the six remaining defendants enjoining the defendants from agreeing to fix retail prices for the sale of alcoholic beverages or grocery products or to advertise uniform prices of products for or among separately owned retail liquor stores. (Scibelli, Weber)

Nintendo

In 1992 a Final Judgment approving a negotiated settlement was entered by the District Court for the Southern District of New York. The terms of the settlement required Nintendo to issue and redeem up to $25 million in consumer coupons nationwide, and to pay $1.75 million in attorney's fees and costs. The settlement resolved charges that between June 1988 and December 1990, Nintendo controlled retail prices to consumers on its eight-bit Nintendo Entertainment.

System (NES) home video consoles, by pressuring retailers to maintain the "suggested" price of $99.95. More than 120,000 Massachusetts consumers were eligible to redeem the Nintendo coupons. (Davies, Weber)

FTC v. Ticor Title Insurance Co.

In 1992 the Division joined in an amicus brief with thirty-five other states to the United States Supreme Court in the above entitled case. The brief urged that some real amount of governmental scrutiny was required in order to protect private action from antitrust scrutiny under the "state action" (or Parker v. Brown) exemption to the antitrust laws.

In a 6-3 decision, the Court ruled in favor of requiring that the state play "a substantial role in determining the specifics" of a policy in order for the state action doctrine to apply. The Court relied heavily on the States' amicus brief in ruling that a broad version of the exemption would not "serve the States' best interest" and would, in fact, "impede [the States'] freedom of action." (Alpert, Weber)

In re Domestic Air Transportation Antitrust Litigation

In 1992 the Commonwealth and twenty-three other states filed objections of behalf of consumers to a proposed settlement of private antitrust class
actions against nine major domestic airlines. (American Airlines, Inc.; Continental Airlines, Inc.; Delta Airlines, Inc.; Midway Airlines, Inc.; Northwest Airlines, Inc.; Pan American World Airways, Inc.; Trans World Airlines, Inc.; United Airlines, Inc.; Air, Inc.).

The states' objections are that the proposed settlements are underfunded, the percentage limitations on redemption are too low, the use of blackout periods is unfair, the certificates are not redeemable through travel agents, the certificates are not redeemable against all fares, there were serious questions as to the adequacy of notice to the class, and that plaintiffs' attorney's fees should not be approved until the actual value of the settlement is determined.

Delaware v. New York

On March 31, 1992, the Division filed a Motion for Leave to File Complaint in Intervention and a Complaint in Intervention. The case, now in the United States Supreme Court, includes every state in the United States and the District of Columbia. The case involves a dispute as to which state may take custody of unclaimed intangible property consisting of dividends, interest, and other distributions arising out of security transactions.

CIVIL RIGHTS DIVISION

The Civil Rights Division enforces the Massachusetts Civil Rights Act which authorizes the Attorney General to seek injunctive relief when the exercise of legal rights is interfered with by threats, intimidation, or coercion. In fiscal year 1991, a total of 17 new injunctions against 30 defendants were obtained by the division involving racial, ethnic and anti-gay violence.

A total of 8 injunctions with 12 defendants involved incidents in Boston. Three of the cases arose in the South End, two of the cases arose in Dorchester, one in South Boston, one in Hyde Park and

one in Charlestown. The Division also obtained injunctions against defendants in Revere, Northbridge, Pembroke, Salem, Lynn, Haverill, Milford and in Provincetown.

Any violation of these court orders would constitute a criminal offense punishable by a maximum fine of $5,000 or a two and one half year sentence in a house of correction. If bodily injury results, the defendants would be subject to a 10 year prison sentence and a maximum fine of $10,000.

POLICE RELATED CASES/ACTIVITIES

Pittsfield Police Department

An extensive investigation arising out of complaints from Pittsfield's minority community revealed that in at least eighteen separate incidents the police had conducted strip searches without probable cause. On February 11, 1992, a precedent setting comprehensive agreement was executed with the City of Pittsfield and its police department. The agreement was designed to act as a guide to the Pittsfield Police Department in conducting law enforcement operations in the future, and to serve to develop and solidify the relationship of trust and cooperation between the police and the minority community. Two of the major aspects of the agreement call for 1) the restricted use of strip searches and new guidelines as to when such searches are necessary, and 2) specialized training programs approved by the Attorney General's office. The Division also convinced the City Council to authorize funding ($80,000) for the trainings. The entire department attended two week long training programs held in June and October 1992.

Revere Police Department

An agreement with the police department was implemented resulting from incidents occurring in 1991 within Revere's Southeast-Asian community. In 1992, as a result of the agreement, a Southeast Asian Civil Rights Liaison was hired for the Division, an active Southeast-Asian Advisory Committee has been maintained in Revere, and a TV program has been developed to educate the Cambodian community as to their rights and the role of the mayor, police department, Attorney General, and other governmental agencies. The Division has also successfully supported funding requests for ROCA, a community group working with youth and the Attorney General's office to reduce violence in Revere. In August 1992, the Division helped to coordinate a city-wide Cambodian Culture Celebration.

Chatham Police Department

After receiving a number of complaints from residents regarding police misconduct, the Division decided that two complaints involving the actions of one officer in two separate incidents warranted complete investigations. On May 27, 1992, it was concluded that the officer appeared to have employed unnecessary force in both incidents, that the arrests made were not warranted and that the department had failed to adequately investigate the complaints. Both complaints were referred to the Chief of Police and the Board of Selectmen for action. In one case, the Board decided that the officer required special retraining, but that no disciplinary action would be taken. The other case was not pursued by the Board due to the complainant's lack of cooperation. The Civil Rights Division continues to work closely with the Police

Department and the Board of Selectmen in developing procedures to handle complaints and to reduce tension within the community. The new policies include a new disciplinary code and the creation of a Community Advisory Committee.

Commonwealth v. Adams, et al.

This was a civil suit filed in 1989 alleging that thirteen Boston Police officers had used excessive force during the arrest of a motorist following a chase which ended in Brookline. A two-week trial took place in January, after which the court issued a Permanent Injunction enjoining the thirteen defendants from the further use of excessive force while detaining, apprehending or arresting individuals. The injunction also holds the defendants accountable for failing to report visible injuries occurring during arrest or other officers who use excessive force. This is the first injunction issued against police officers under the Massachusetts Civil Rights Act, as well as the first known civil rights injunction in the U.S. against individual officers (rather than a department) enjoining excessive force, and requiring the reporting of other officers' use of excessive force, under threat of criminal penalties. The injunction has been temporarily vacated pending a full appellate review.

Commonwealth v. James K. Houlihan

A Lawrence police officer was indicted for alleged civil rights violations during an arrest of two Hispanic men in Lawrence. In July the defendant pleaded guilty to six misdemeanor charges--four counts of assault and battery and two counts of civil rights violations. He also resigned from the force. This case included a court ruling which denied an officer's attempt to dismiss indictments based on the Massachusetts State Constitution's guarantee against self-incrimination.

Other Police Related Activities

The Division engaged in a number of investigations related to complaints of police misconduct. In the complaints in which allegations were substantiated after investigations, five resulted in the referral of substantiated findings to the Chief of Police with a recommendation of disciplinary action and training. (Richard W. Cole, George Fisher, Andrea Cabral, Tania Gray). Two police departments also adopted model policies which were recommended by the Division after investigations identified potential policies or practices which might expose the departments to future liability.

In an effort to promote civil rights, assist the police, and to provide departments with technical assistance, the Division continues to provide an extensive amount of training to police departments throughout Massachusetts. Subjects of these trainings include the investigation and prosecution of hate crimes, issues of bias and prejudice, federal and state constitutional and civil rights laws, the civil liability of police supervisors and police officers, sexual harassment in the workplace, and the obligation of police departments under the newly enacted Americans with Disabilities Act.

BIAS-MOTIVATED INJUNCTION CASES/TRIALS/SETTLEMENTS

Commonwealth v. John Does

In October 1991 in Boston's South End, the defendants allegedly attacked three hispanic males with a steam iron and a leather coil. As they kicked and punched the victims, the defendants also yelled numerous racial and ethnic slurs. A Preliminary Injunction was issued on January 24, 1992, enjoining the defendants, two teenagers, from further harassing, intimidating or threatening the victims or any person in the Commonwealth based on their race or national origin.

Commonwealth v. Steven Kaplan

The defendant allegedly, on numerous occasions, directed racial slurs at a Cambodian family at the Revere Housing Authority. Between May and July, the victims' car was vandalized with racial graffiti, their house was shot at with a BB gun and other property was damaged. Because of fear of harassment, the children of this family were not allowed to play outside their house and the parents were compelled to take them to a park so that they could play safely. A Preliminary Injunction was issued on February 20, 1992, enjoining the defendant, under the Massachusetts Civil Rights Act, from further harassing, intimidating or threatening the victims or any person in the Commonwealth based upon the person's race or national origin.

Commonwealth v. Peter A. Costa

On July 4, 1992 in Provincetown, the defendant allegedly approached two men and violently shoved one of them backward while making anti-gay slurs. Later, the defendant threatened the victims, who were in their car, with physical violence. A Preliminary Injunction was obtained on October 20, 1992, enjoining the defendant under the Massachusetts Civil Rights Act from further harassing, intimidating or threatening the victims or any person in the Commonwealth based on their sexual orientation or perceived sexual orientation.

Commonwealth v. Bernard Vivolo

On July 15, 1992 in Boston's North End, the defendant allegedly assaulted a man with an umbrella. During the assault, the defendant yelled numerous obscenities and anti-gay slurs at the victim. A Preliminary Injunction was issued on November 2, 1992, enjoining the defendant under the

Massachusetts Civil Rights Act from further harassing, intimidating or threatening the victim or any person in the Commonwealth based on their sexual orientation or perceived sexual orientation.

Commonwealth v. Leonard J. Iannantuoni

On June 21, 1992 at a park on the Avon/Brockton border, the defendant allegedly approached the victim and a fellow runner and began shouting anti-Semitic slurs at the victim. Shortly after the defendant had left, the victim and his friend resumed running. As they were running, they passed the defendant. The defendant struck the victim on the back of his neck and knocked him unconscious. The victim sustained injuries to his head, arms, legs and knees. The defendant had harassed the victim on a number of previous occasions. A Preliminary Injunction was obtained on November 3, 1992, enjoining the defendant under the

Massachusetts Civil Rights Act from further harassing, intimidating or threatening the victim or any person in the Commonwealth based on their religion.

Commonwealth v. John V. Devaney, et al.

This civil suit sought a Preliminary Injunction against two defendants for allegedly assaulting two women at a Methuen bar while yelling anti-gay/anti-lesbian epithets. Parallel criminal charges were pending against the defendants as a result of the incident. Defendants sought to depose the victims and witnesses. The Commonwealth moved for a protective order seeking a stay of discovery until the criminal matter was concluded. The protective order was granted on September 18, 1992. This is the first ruling in Massachusetts which held that when there is a parallel criminal prosecution and civil rights injunctive action, a defendant will not be permitted to pursue civil discovery in the injunctive case until after the criminal trial occurs.

Commonwealth v. John Randolph

A Preliminary Injunction was issued against the defendant in July for his alleged continuous harassment of his Portuguese neighbors with threats and ethnic slurs. The Commonwealth requested that the court declare that the defendant had violated the Massachusetts Civil Rights Act, and that a Permanent Injunction be issued. After a three day trial in March 1992, the court issued a Permanent Injunction against the defendant.

Commonwealth v. Terrence Sullivan

A Preliminary Injunction was issued against the defendant on July 14, 1989 for his allegedly harassing, intimidating and threatening a Cambodian woman at a Burger King parking lot in Lowell by physically preventing her from entering the restaurant while yelling ethnic slurs. A two-day trial took place in July 1992, in which the Commonwealth sought a Permanent Injunction against the defendant, along with a declaration that the defendant had violated the Massachusetts Civil Rights Act. At the conclusion of the trial, the defendant decided to settle the case by consenting to the terms of a Permanent Injunction.

Commonwealth v. Donald Pilkington, et al.

This case alleged that six defendants physically assaulted two men while yelling anti-gay slurs at them. The defendants were alleged to be members of a neo-Nazi hate group called the White Youth League. An injunction, effective for five years, was entered against each of the defendants through Consent Judgments.

Commonwealth v. Ismael Hernandez, et al.

Five defendants allegedly assaulted a man in Boston's Fens/Victory Garden section because of his sexual orientation. A Consent Judgment was entered against one of the defendants on March 8, 1990. A permanent injunction was issued against each of the remaining four defendants on February 2, 1992, through Default Judgments.

Commonwealth v. Kevin and Denise Foley

Defendants allegedly harassed a hispanic family and a black family with racial epithets and threats. An injunction, effective for three years, was entered against each of the defendants through Consent Judgments on May 5, 1992.

Commonwealth v. Carl Beldotti

The defendant allegedly harassed three men because of their sexual orientation. An injunction, effective for three years, was entered against the defendant through a Consent Judgment on May 5, 1992.

Commonwealth v. Harold Cue

The defendant allegedly harassed a Jewish woman with anti-Semitic slurs, threats, and graffiti. A permanent injunction was issued against the defendant through a Consent Judgment on May 26, 1992.

OPERATION RESCUE

Commonwealth v. Operation Rescue

After a two-week trial, a Permanent Injunction was issued in 1991 against members of Operation Rescue which prohibited the blocking of entrances to clinics which provide abortion services and counseling. During 1992 the Commonwealth charged several of the members with violation of the injunction. A trial of two of those defendants took place in December of 1992. On December 11, 1992, the jury found one defendant guilty and the other not guilty. The guilty defendant has been sentenced to serve six months on a two and a half year sentence.

The Division continues to be involved in ongoing training of police departments regarding the arrest and the booking of individuals who blockade clinics which provide abortion services and counseling.

The Division coordinated with the Boston Police Department to deal with and deter Operation Rescue from succeeding in an attempted month-long blockade of a clinic located in Boston.

HOUSING DISCRIMINATION CASES

Commonwealth v. Robert and Florence Dowd

This housing discrimination case was based on the complainant's marital status. A trial was held on November 3, 1991 and the court decided in favor of the plaintiff and awarded damages. During 1992, after further proceedings, the court also awarded attorney's fees to the Commonwealth. This is the first award of attorney's fees to the Attorney General in a housing discrimination case in which the court applied standards and rates for private attorneys. The attorney's fees claim is currently under appeal.

Commonwealth v. John J. Hannon

This case, alleging housing discrimination based on the complainant's sex, was filed in January 1992. In settling the case, the defendant agreed to pay compensation to the complainant and to enter a consent judgment enjoining him from discriminating in the future.

Commonwealth v. Norman Brettell Trust

This case, filed in 1991, alleged housing discrimination based on the complainant's section 8 subsidy status. The case was settled in July 1992. By the terms of the Agreement of Compromise, the defendant paid compensation to the complainant and attorney's fees to the Commonwealth. The defendant also agreed not to discriminate in the future.

Commonwealth v. Oak Hill Housing Company, et al.

This housing discrimination case was filed in May 1992. The suit alleged that the landlord failed to protect adequately a tenant from race-motivated harassment and retaliated against the tenant when she complained of the harassment. In settling the case, the defendant agreed (1) not to discriminate in the future and to protect its tenants from race-motivated harassment; (2) to establish a program to address racial tensions among tenants, train its employees to have greater sensitivity in issues involving race or color, and revise its policies so as to effect these goals; and (3) to pay compensation to the complainant. By the terms of the settlement, the Office of the Attorney General will monitor the implementation of the agreed-upon programs.

Commonwealth v. Samia Companies, et al.

This case, alleging housing discrimination based on the complainant's subsidy status, was filed in January 1991. The case was settled, by an agreement that the Defendant would compensate the complainant and would not discriminate in the future.

DISABILITY ISSUES

Since the effective date, January 1992, of Title II, the Americans with Disabilities Act (ADA), Division staff have spent a substantial amount of time conducting presentations and trainings concerning the effect of the provisions of the ADA. Groups to whom presentations were made include the Massachusetts Chiefs of Police Association, the Association of Human Service Providers, the Massachusetts Sheriff's Association, the Association of Town Counsel and City Solicitors. Division staff also prepared written materials on the ADA for distribution, including a Question and Answer article concerning requirements of Title II. Assistant Attorney General Stanley J. Eichner has also participated on the National Association of Attorneys General working group on the ADA.

Physical Access to Municipal Meetings

In 1991 the Attorney General wrote to all the cities and towns in Massachusetts informing them of their obligation to guarantee physical access to municipal meetings to their disabled residents. As a follow-up to the compliance of many cities and towns in 1991, in 1992 the towns of Whitman and Malden authorized renovations or relocation of their municipal meeting so as to provide access to disabled persons. Southbridge also agreed to relocate its town meetings until renovations occur, in response to a demand letter, which included the threat of litigation.

Credit Convertors

On December 18, the Division reached an agreement with Credit Convertors of St. Paul, Minnesota, in which they agreed to refrain from engaging in certain unfair debt collection practices and from recording conversations with consumers without their consent. In addition, the debt collection agency has agreed to pay the Commonwealth $15,000 in civil penalties, which will be used to fund the SCORE program, and to modify and install a new telephone line so that Massachusetts calls will not be recorded in the future.

Three Out-of-State Debt Collection Agencies
(Commonwealth v. Credit Protection Association, Inc.)
(Commonwealth v. North American Collections, Inc.)
(Commonwealth v. Viking Collection Service, Inc.)

On December 18, the Division reached settlement agreements with three out-of-state debt collection agencies, Credit Protection Association, Inc., North American Collections, Inc., and Viking Collection Services, Inc. The companies collected debts without licenses from the State Banking Commission and Viking violated the Massachusetts' debt collection regulations by contacting a consumer debtor at work more times than is allowed by law. Credit Protection Association and North American Collections each paid $3,500, while Viking Collection Services paid $9,000 in penalties and costs for collecting debts without a license. In three separate consent judgments, each company is prohibited from acting as a debt collection agency in Massachusetts until it has applied for and been granted a license from the State Banking Commission.

Assurances of Discontinuance with 2 Debt Collectors: EZ Finance Company and Joseph Silva

On June 9, the Division filed an Assurance of Discontinuance with Suffolk County Superior Court in which EZ Finance Company, Inc. agreed to refrain from engaging in certain unfair and deceptive debt collection acts and practices. In addition, EZ Finance agrees to monitor the collection activities of any person or other entity to whom it assigns any debts for collection to ensure that such person or entity complies with the Assurance.

Also on June 9, the Division filed an Assurance of Discontinuance with Suffolk County Superior Court in which Joseph Silva agreed to refrain from engaging in the following acts and practices: (1) engaging in the collection of debts in Massachusetts without first obtaining from the Commission of Banks a license to carry on such business, and without having on file with the state treasurer a good and sufficient bond, and (2) using a business card which contains threatening statements of any kind.

MULTISTATE SETTLEMENTS

Multistate Environmental Group
(General Electric)
(Carlisle Plastics)

On November 9, the Division joined the Attorneys General of 32 states in a settlement with the General Electric Company concerning the claims that the company's "Energy Choice" line of light bulbs represents a new, environmentally sound product. The Attorneys General allege that GE made various misrepresentations about its Energy Choice light bulbs including statements that these light bulbs save energy and that using these bulbs could help eliminate pollution from the atmosphere. In fact, most of the energy savings realized from using Energy Choice incandescents are due to the fact that they are simply lower wattage bulbs, and not because they are significantly more efficient. The agreement required GE to pay $15,000 to each of the eleven original signatory states, including Massachusetts.

On March 11, the Division announced that ten states, including Massachusetts, have entered into a settlement agreement with Carlisle Plastics, Inc., concerning claims that the company's "Ruffies" trash bags are "degradable" and "compostable." The company allegedly made misleading claims that its Ruffies bags "will degrade in landfills" and that its yard waste bags are "specifically designed for municipal composting operations" and are "perfect for composting." The agreement requires Carlisle Plastics to pay a total of $45,000 to the ten states, including $4,500 to Massachusetts.

Multistate Food Group
(S&B International Corporation)

On October 8, the Division joined the Attorneys General from 10 other states in a $33,000 settlement with S&B International Corp., a California-based food manufacturer, which allegedly misled consumers about the monosodium glutamate (MSG) content of some of its seasoning mixes. S&B falsely claimed in radio advertisements and on product labels that its seasoning mixes contained no MSG, when, in fact, they contained hydrolyzed protein. The Attorneys General alleged that when a substance is hydrolyzed to create a hydrolyzed protein using the methods employed by food manufacturers, MSG is created.

OTHER INITIATIVES

SCORE

Project SCORE* (Student Conflict Resolution Experts) is a program through which the Division provides funding, training, and technical assistance for the development and implementation of peer mediation programs in urban schools. These programs, which use trained students to mediate school-based conflicts, were designed particularly to respond to increases in violence and racial tensions in the targeted cities.

In 1992, new SCORE programs were started in Boston and Fall River which, added to the existing programs in Somerville, Worcester, Lowell, and Springfield, brings the total number of SCORE programs to 15 schools in 6 cities. Over 400 disputes were mediated by these programs; 96% resulted in written agreements; only a handful of these agreements were broken.

In addition to developing peer mediation programs, SCORE monies were used to fund two basic mediation skills trainings for staff and youths in the Department of Youth Services and one for fourteen youths in Revere who belong to fueding Cambodian gangs.

When racial violence broke out in Medford High School in early December, SCORE funds were used to restore peace and safety to the school. Funds will also be used to develop a SCORE program at the high school beginning in January, 1993. SCORE is a program sponsored by the Massachusetts Attorney General and is not affiliated with any private business enterprise.

Elm Medical Laboratories

(Commonwealth v. Elm Medical Laboratories, Inc.)

On July 27, Massachusetts Appeals Court upheld a permanent injunction obtained by the Division which prohibits two individuals who formerly supervised Elm Medical Laboratories from supervising a medical lab. The Court agreed with our argument that the laboratory had violated the Massachusetts Consumer Protection Act by improperly and inadequately performing pap smears and other tests, and further agreed that under this law a laboratory is required to disclose to doctors and patients material information about the laboratory's practices that could render its diagnoses inaccurate. The Appeals Court also held that the state is not a person subject to suit under the Civil Rights Act -- an important decision for the government bureau and other state agencies.

Telephone Carrier Agreement

In May 1992, Attorney General Harshbarger, along with 35 other state Attorneys General, entered into a voluntary agreement with AT&T, MCI, and Sprint for the carriers to better monitor and potentially to discontinue services of "900 number" offerings which are carried on their networks. This cooperative effort along with recently enacted federal regulations can help curb "900-number" telephone fraud.

Cite Your Rights Cards

In October, the Division released the first set of "Cite Your Rights" cards designed to teach consumers basic consumer rights in the areas of store return policy, defective goods, automobile lemon laws, security deposits, and a half dozen other areas. Distribution of the cards is through the 8400 line and local consumer programs.

Adoptions of New England

(Commonwealth v. Adoptions of New England)

A petition was filed and granted in Suffolk Superior Court, in March for the appointment of a receiver to take over the records of and guardianship proceedings underway for Adoptions of New England, Inc., following the suspension of the company's license by the Massachusetts Office for Children. The corporation's officers and directors resigned when an audit showed that Adoptions of New England had a deficit of approximately $900,000 and left the state to return to their main base in Arizona. The abrupt closure of the agency left a waiting list of 30 families who had paid as much as $27,000 in advance deposits for babies who never arrived for Adoptions of New England, Inc. clients.

NURSING HOME CASES:

Wayne Manor Nursing Home

(Department of Public Health v. Wayne Manor Nursing Home)

In February, a patient protection receivership, obtained by the Consumer Protection Division to protect approximately 73 ill or mentally disabled patients living in Wayne Manor, a Dorchester nursing home, was terminated by the transfer of the facility's ownership to Family Rehabilitative Services, Inc. The successful transfer of the home to a licensee found suitable to operate it ended a long saga which began by the Division's seeking the dismissal of the bankruptcy proceeding to protect patients. At that time, the patients' health was in serious jeopardy: the utilities, the provision of food and other goods and services were about to be cut off and the bankruptcy trustee wanted to quit. The receiver brought the home back up to health care standards. We then negotiated for the bank holding the first mortgage on the property instead of a new owner to pay $62,900 to the Commonwealth to resolve successor liability issues and thus facilitated the sale by reducing its auction price. The former owner, Barbara Cohen, was subsequently indicted and convicted on multiple charges of embezzlement of patient funds, larceny and Medicaid fraud, by the MFCU.

Harvard Manor Nursing Home

(Department of Public Health v. Harvard Manor Nursing Home)

On November 23, following the termination of the Harvard Manor Nursing Home's federal Medicaid funding, the Consumer Protection Division intervened to have a patient protector receiver appointed for the nursing home. The appointment of the receiver was sought by the Attorney General to ensure the patients' health and safety, since the withdrawal of federal funding resulted in the loss of 50% of the funds which cover the costs of patients' care. The decision to terminate the nursing home from the Medicaid program resulted from a finding by the U.S. Department of Health and Human Services that the patients were living in harmful conditions at the facility.

Brockton Ridge Long-Term Care Center, Regent Park Long-Term Care Center

(Department of Public Health v. Brockton Ridge Long-Term Care Center)

(Department of Public Health v. Regent Park Long-Term Care Center)

In individual actions commenced and conducted separately, we had obtained the establishment of patient protector receiverships for the Brockton Ridge and Regent Park nursing homes, both operated by Avanti, Inc. but owned by a California real estate partnership. Patients had been subjected to mistreatment and neglect. This year, Brockton Ridge, a home that had, among other problems, 30 beds located below ground level, was closed, much to the dismay of the owners while Regent Park was successfully sold to another operator/owner. The termination of both receiverships, the first by closure and the second by transfer and sale, effectuated the office's goal of protecting the patients in the manner most calculated to improve the quality of life. The property owners were obliged to pay $64,275 for penalties and the costs of the Brockton Ridge receivership and another $100,000 when Regent Park was sold.

REGULATIONS

Mortgage Lender and Broker Regulations

The Attorney General's regulations under c. 93A governing mortgage lenders and mortgage brokers were published in May and took effect on August 1, 1992. The regulations require that all brokers and many lenders provide borrowers with standardized copies of the Attorney General's Mortgage Broker and Lender Disclosure forms, which identify the essential features of a mortgage loan transaction as well as the cost and interest rate for the borrower. The regulations also require that lenders and brokers take reasonable steps to assure that borrowers, including non-English speaking consumers, understand the loan transaction. Unconscionable rates or other loan terms, advertising ploys such as "immediate approval" and "immediate closings," are prohibited, and the use of other advertising terms such as "bad credit, no problem" and "avoid foreclosure," are restricted. These regulations were promulgated to prevent future abuses involving second mortgages or refinancing, while creating a level playing field for legitimate businesses.

LEGISLATION

Home Improvement Contractor Law

This law regulating home improvement contractors was signed on December 31, 1991, and took effect on July 1, 1992. The law prohibits home improvement contractors from acting as mortgage brokers or lenders in connection with the home improvement contracts they enter into, requires a written contract for any job over $1,000, requires that contractors register with the Bureau of Building Regulations and Standards, establishes a guaranty fund to provide limited restitution to consumers who have been defrauded by a registered contractor but are unable to collect on a judgment, and provides for criminal penalties for those who fail to obtain a certificate of registration. An additional bill designed to streamline the process for injured consumers to obtain access to the "guaranty fund" is not expected to pass this session.

Purchase Privacy Law

On March 26, 1992, the purchase privacy law which restricts the personal information that retailers may demand when they accept payment from consumers by check or credit card took effect. The measures, which are intended to protect the consumer from fraud, prohibits the recording of information other than the consumer's name, address, motor vehicle license number, and the consumer's choice of home or business number when the consumer pays by check. The merchant can no longer record the consumer's social security number, race, or credit card number on a check or elsewhere. The law also prohibits the merchant from requiring that the consumer sign a statement allowing his/her credit card to be charged if the check is not honored and from accessing the consumers credit card account to determine the amount of available credit when the consumer is paying by check. The law also protects a consumer who pays by credit or charge card by prohibiting the recording of information on the credit card slip other than that which is required by the credit company.

SPRINGFIELD CASES

Commonwealth of Massachusetts v. Basement Waterproofing Nationwide, Inc.

The Attorney General obtained a default judgment against the defendants in this case. $379,000 default judgment.

Commonwealth v. New England Uses Cars, Inc.

The complaint is ready to be filed. This is also an action to enforce the provisions of the Used Car Warranty Law.

Commonwealth v. Valley Furniture

This is an action alleging unfair and deceptive acts and practices in the conduct of a "going out of business sale." Settlement is imminent and will result in the distribution of nearly $105,000 in consumer restitution. Settlement agreements should be signed before 1993. We have agreed that they will pay $104,014.62 in consumer restitution and contribute $25,000 to the local Consumer Aid Fund.

Commonwealth v. West End Market

This is an action alleges unfair and deceptive acts and practices in the conduct of a meat market. The defendant in this matter closed down shop. This mater is still ongoing. Injunction vs. meat market arising out 93A violations.

LOCAL CONSUMER PROGRAMS

FACE-TO-FACE MEDIATION PROGRAMS

The Local Consumer/Mediation Services (LCMS) administer the Local Consumer Aid Fund (LCAF) of the Office of the Attorney General. The LCAF was created by statute, G.L. c. 12, §11G, in 1977. At the present time, nineteen community based Local Consumer Programs and seven Face-to-Face Mediation Programs are grant recipients of the Fund, which is directed to the resolution of consumer complaints. Technical assistance and continuing training are given to the programs by the staff of the LCMS.

These programs, which serve all 351 communities in the Commonwealth, annually resolve thousands of consumer problems, and serve to educate consumers and businesses alike in the areas of state and federal consumer law. Working in cooperation with the Office of the Attorney General, they also alert this Office to patterns of unfair or deceptive acts and practices in the marketplace, so that appropriate legal action may be taken.

In fiscal years 1992 and 1993, the General Court appropriated $605,901 for the Local Consumer Aid Fund. Ten percent of these grant monies were retained by the Office of the Attorney General for administrative purposes. Supplemental funding from settlement of consumer cases was also given to the programs, and for FY 1992, this supplemental funding resulted in grants to the local programs of $666,500.00, and in 1993, grants of $701,100 will be distributed. In 1992, the Local Consumer Programs mediated over 12,000 complaints, recovering over $2,665,657.00 in goods and services for consumers. The Programs also fielded over 83,000 inquiry calls on various issues, both consumer and non-consumer. Each caller was either given self-help information, or directed to other appropriate state or federal agencies.

PUBLIC PROTECTION BUREAU

Health Care Policy Development

In 1992, the Public Protection Bureau increased its focus on health care policy issues. Bureau personnel conducted a continuing series of meetings with participants in the health care industry, including hospitals, insurers, managed care providers, physicians, and community health centers. Bureau personnel also met on a continuing basis with consumer and employer groups concerned about health care cost and access issues. Finally, bureau personnel began to develop informal consulting relationships with academics from public health and medical schools in the area.

These meetings (along with policy research and discussions conducted internally by the Bureau) led to the definition of a health policy "blueprint" for the Attorney General. This document is designed to define a direction for long term reform which should, in turn, provide a framework for continuing development of positions on health care issues by the Attorney General in 1993. The priority areas identified are the following:

* Support for a national solution to the problem of the uninsured.
* Insurance market reform.
* Relief for non-group health insurance purchasers.
* Support for industry partnerships.
* Review of hospital plant and equipment investment.
* Fraud and abuse by providers.
* Support for managed care with sensitivity to concerns of physicians and patients.
* Availability of information on cost and quality.
* Urban health issues.

LEAD POISONING TASK FORCE AND OTHER LEAD INITIATIVES

In late 1991, the Attorney General convened a Lead Poisoning Task Force to address some of the complex and difficult issues surrounding the state's lead paint laws and regulations. Members of the Task Force included representatives of state and federal agencies, local boards of health, the real estate, insurance and deleading industries and advocacy groups, attorneys and others. The Task Force formed four subcommittees for the purpose of exchanging viewpoints and information concerning identified issues. These subcommittees: Identification and Response to Children at Risk, Residential Removal and Disposal of Lead, Nonresidential Leading Removal and Disposal, and Funding and Liability Issues met on a regular basis throughout the winter and spring of 1992. As a result of the discussions which took place, each of the subcommittees proposed a detailed analysis of the issues discussed as well as suggestions for changes in the laws, regulations, enforcement, education and outreach. These findings and recommendations were combined and published in the Report of the Attorney General's Lead Poisoning Task Force in August of 1992.

Following publication of the Report the Task Force met again in the fall to discuss the Report and plan for implementation of many of the proposals. As a result, two implementation groups were created and commenced to meet on a regular basis.

As another outgrowth of the Task Force, the Bureau began to receive and investigate numerous complaint from many different sources concerning alleged violation of the lead laws by deleaders, lead inspectors, and property owners. As of the end of 1992 a number of investigations were ongoing and the announcement of several indictments, civil complaints and agreed settlements appeared imminent.

ANTITRUST DIVISION

The Antitrust Division enforces federal and state antitrust laws prohibiting anti-competitive activity. The U.S. Supreme Court has described these laws as the "Magna Carta" of our free enterprise system. Enforcement of these laws protects consumers from the adverse economic effect of price-fixing, boycotts, monopolization and other similar restraints of trade. Enforcement of these laws also protects businesses, particularly small businesses, by curbing the kind of anti-competitive activity that hampers the ability of a business to compete on an equal basis in the marketplace.

The Division prosecutes violations that principally affect Massachusetts consumers. The Division also joins forces with other states to prosecute violations that have a negative impact on consumers and businesses in multiple states including Massachusetts. Through the National Association of Attorneys General, the Division coordinates it activities with those of other states and with the activities of federal antitrust enforcers.

Multistate Insurance Antitrust Litigation

The Commonwealth is a party along with 19 other states and various private parties in these antitrust actions in the United States District Court for the Northern District of California against a total of more than thirty insurance companies, reinsurers, intermediary brokers, and trade associations. The complaints allege that defendants illegally manipulated the market for commercial general liability (CGL) insurance, the insurance purchased by most businesses, public agencies, and non-profit organizations to cover their liability to third parties for personal injuries and property damage. Treble damages for injuries to public entities are sought, as well as extensive injunctive relief.

The United States Supreme Court granted certiorari to review the decision of the Unites States Court of Appeals for the Ninth Circuit which reversed and remanded the District Court (Schwarzer, J.) decision dismissing the plaintiff's actions on McCarran-Ferguson, state action, comity, and pleading grounds. The Supreme Court granted certiorari on two issues in the case: (1) whether the United States may enforce United States antitrust laws against foreign companies for action in a foreign country that has effects in the United States (international comity) and (2) the scope of the McCarran-Ferguson Act, which exempts certain conduct of insurance companies from prosecution under the antitrust laws.

The Division has taken a leading role in settlement negotiations as well as the drafting of the states' international comity brief which, along with the states' McCarran-Ferguson brief, was filed on December 23, 1992. The Division will also take an active role in the preparation for the oral argument before the United States Supreme Court, to take place in early 1993. (Alpert, Weber)

In re Clozapine Antitrust Litigation

This case involved a multi-state lawsuit against Sandoz Pharmaceuticals Corp. and Caremark Corp. alleging illegal tying in violation of section 1 of the Sherman Act and monopolization under section 2 of the Sherman Act. The states' antitrust lawsuits were based on Sandoz's and Caremark's marketing of the anti-schizophrenia drug, Clozaril. Sandoz refused to sell the drug unless the buyer also agreed to purchase a package of blood monitoring and blood testing services provided exclusively by Caremark. The Division was part of the eight member Case Management Committee that initiated and organized the litigation of this case.

The case was settled in September 1992 and was joined by all states in the United States and the District of Columbia. Sandoz and Caremark agreed to pay purchasers of the drug, including state agencies, $13 million plus attorney's fees and costs. In addition, $3 million will be paid to the National Organization of Rare Diseases to be used in the treatment of new patients with Clozaril. The defendants also agreed to provide a 15% reduction in the wholesale price of Clozaril to at least 2000 patients on social security disability income. The defendants are further prohibited from reinstating the tie between Clozaril and the blood monitoring and blood testing services provided by Caremark.

The United States District Court for the Northern District of Illinois approved the settlement on Nov. 24, 1992. (Scibelli, Weber)

Blue Shield - Baystate Merger

The Attorney General agreed not to make an antitrust challenge to Blue Shield's merger with Baystate Healthcare, a failing HMO serving over 350,000 subscribers in the Commonwealth. Pursuant to the agreement between the Attorney General and Blue Shield, Blue Shield agreed to contribute $2 million to provide free health insurance to uninsured children unless its operation of Baystate proves financially unsuccessful. Further, for two years, Blue Shield is prohibited from merging with any other health care insurer or HMO if the Attorney General finds that the merger adversely affects competition. Blue Shield also agreed to fund a study to determine the causes of Baystate's failure and to aid the Attorney General in monitoring the competitive effects of the new health care financing law, G.L. c. 495, by responding to inquiries from the Attorney General within two business days. (Weber, Scibelli, Alpert).

Commonwealth v. Cahill, et al.

In this federal court action, filed by the Division in August of 1988, the Commonwealth alleged that twenty-four Springfield obstetrician/gynecologists conspired to boycott Blue Shield of Massachusetts in violation of state and federal antitrust laws. The suit sought injunctive relief and the imposition of civil penalties against twenty-four defendant physicians.

In 1992 the remaining eleven defendants entered into consent judgments with the Commonwealth: enjoining violations of the antitrust laws; containing agreements to withdraw letters of resignation from Blue Shield and to notify the Commonwealth prior to submission of any future letters of withdrawal; and providing a total recovery to the Commonwealth of $140,000 in money and free medical services to low income women. In total, the Commonwealth recovered over $300,000 in cash payments and free medical services from the twenty-four defendants. (Weber, Davies, Alpert)

Mitsubishi

On January 15, 1992, the United States District Court in Baltimore, Maryland entered a Final Judgment in this case approving the settlement negotiated between the states and Mitsubishi Electronics. The terms of the settlement require Mitsubishi Electronics to refund $7.95 million to consumers to settle charges that it unlawfully fixed the retail prices of certain Mitsubishi and MGA brand televisions. The settlement resolved charges that Mitsubishi had attempted to enlist electronics retailers in a nationwide conspiracy to fix retail prices and had obtained agreements from dealers not to sell below Mitsubishi's retail price. Under the terms of the settlement, more than 11,000 Massachusetts consumers were eligible to receive refunds for products purchased in 1988. (Weber, Davies, O'Neill, Botte)

Getty Petroleum Corp. v. Scott Harshbarger

On September 18, 1992, in anticipation of an enforcement action by the Division, Getty Petroleum Corp. filed a complaint in United States District Court for the District of Massachusetts requesting declaratory judgment and injunctive relief regarding the applicability of G.L. c. 93E to Getty's policy of requiring dealers to remain open certain hours per day and days per week. G.L. c. 93E prohibits lessors to require lessees to stay open certain hours per day or days per week. On the Commonwealth's motion to dismiss, Judge Tauro dismissed Getty's preemption claim pursuant to the Younger abstention doctrine, and abstained from making a decision on Getty's due process claim, pending resolution of the Commonwealth's state court action. (Matlack, Alpert, Nasca, Weber, Wilkins [Govt.])

Commonwealth v. Getty Petroleum Corp.

On September 23, 1992, the Division initiated this state court action in Suffolk Superior Court. The Commonwealth alleges that Getty's policy of forcing dealers to stay open certain hours per day and days per week violates G.L. c. 93E. (Matlack, Alpert, Nasca, Weber)

Commonwealth v. J.F. Inc., Ludlow Enterprises, Inc., L.A.Z.I. Inc., et al.

In 1988 the Division brought an antitrust action against various liquor stores in Western Massachusetts for agreeing to fix prices by jointly advertising the same prices. In 1992 settlements and signed consent judgments were entered with the six remaining defendants enjoining the defendants from agreeing to fix retail prices for the sale of alcoholic beverages or grocery products or to advertise uniform prices of products for or among separately owned retail liquor stores. (Scibelli, Weber)

Nintendo

In 1992 a Final Judgment approving a negotiated settlement was entered by the District Court for the Southern District of New York. The terms of the settlement required Nintendo to issue and redeem up to $25 million in consumer coupons nationwide, and to pay $1.75 million in attorney's fees and costs. The settlement resolved charges that between June 1988 and December 1990, Nintendo controlled retail prices to consumers on its eight-bit Nintendo Entertainment System (NES) home video consoles, by pressuring retailers to maintain the "suggested" price of $99.95. More than 120,000 Massachusetts consumers were eligible to redeem the Nintendo coupons. (Davies, Weber)

FTC v. Ticor Title Insurance Co.

In 1992 the Division joined in an amicus brief with thirty-five other states to the United States Supreme Court in the above entitled case. The brief urged that some real amount of governmental scrutiny was required in order to protect private action from antitrust scrutiny under the "state action" (or Parker v. Brown) exemption to the antitrust laws.

In a 6-3 decision, the Court ruled in favor of requiring that the state play "a substantial role in determining the specifics" of a policy in order for the state action doctrine to apply. The Court relied heavily on the States' amicus brief in ruling that a

broad version of the exemption would not "serve the States' best interest" and would, in fact, "impede [the States'] freedom of action." (Alpert, Weber)

In re Domestic Air Transportation Antitrust Litigation

In 1992 the Commonwealth and twenty-three other states filed objections of behalf of consumers to a proposed settlement of private antitrust class
actions against nine major domestic airlines. (American Airlines, Inc.; Continental Airlines, Inc.; Delta Airlines, Inc.; Midway Airlines, Inc.; Northwest Airlines, Inc.; Pan American World Airways, Inc.; Trans World Airlines, Inc.; United Airlines, Inc.; Air, Inc.).

The states' objections are that the proposed settlements are underfunded, the percentage limitations on redemption are too low, the use of blackout periods is unfair, the certificates are not redeemable through travel agents, the certificates are not redeemable against all fares, there were serious questions as to the adequacy of notice to the class, and that plaintiffs' attorney's fees should not be approved until the actual value of the settlement is determined.

Delaware v. New York

On March 31, 1992, the Division filed a Motion for Leave to File Complaint in Intervention and a Complaint in Intervention. The case, now in the United States Supreme Court, includes every state in the United States and the District of Columbia. The case involves a dispute as to which state may take custody of unclaimed intangible property consisting of dividends, interest, and other distributions arising out of security transactions.

CIVIL RIGHTS DIVISION

The Civil Rights Division enforces the Massachusetts Civil Rights Act which authorizes the Attorney General to seek injunctive relief when the exercise of legal rights is interfered with by threats, intimidation, or coercion. In fiscal year 1991, a total of 17 new injunctions against 30 defendants were obtained by the division involving racial, ethnic and anti-gay violence.

A total of 8 injunctions with 12 defendants involved incidents in Boston. Three of the cases arose in the South End, two of the cases arose in Dorchester, one in South Boston, one in Hyde Park and one in Charlestown. The Division also obtained injunctions against defendants in Revere, Northbridge, Pembroke, Salem, Lynn, Haverill, Milford and in Provincetown.

Any violation of these court orders would constitute a criminal offense punishable by a maximum fine of $5,000 or a two and one half year sentence in a house of correction. If bodily injury results, the defendants would be subject to a 10 year prison sentence and a maximum fine of $10,000.

POLICE RELATED CASES/ACTIVITIES

Pittsfield Police Department

An extensive investigation arising out of complaints from Pittsfield's minority community revealed that in at least eighteen separate incidents the police had conducted strip searches without probable cause. On February 11, 1992, a precedent setting comprehensive agreement was executed with the City of Pittsfield and its police department. The agreement was designed to act as a guide to the Pittsfield Police Department in conducting law enforcement operations in the future, and to serve to develop and solidify the relationship of trust and cooperation between the police and the minority community. Two of the major aspects of the agreement call for 1) the restricted use of strip searches and new guidelines as to when such searches are necessary, and 2) specialized training programs approved by the Attorney General's office. The Division also convinced the City Council to authorize funding ($80,000) for the trainings. The entire department attended two week long training programs held in June and October 1992.

Revere Police Department

An agreement with the police department was implemented resulting from incidents occurring in 1991 within Revere's Southeast-Asian community. In 1992, as a result of the agreement, a Southeast Asian Civil Rights Liaison was hired for the Division, an active Southeast-Asian Advisory Committee has been maintained in Revere, and a TV program has been developed to educate the Cambodian community as to their rights and the role of the mayor, police department, Attorney General, and other governmental agencies. The Division has also successfully supported funding requests for ROCA, a community group working with youth and the Attorney General's office to reduce violence in Revere. In August 1992, the Division helped to coordinate a city-wide Cambodian Culture Celebration.

Chatham Police Department

After receiving a number of complaints from residents regarding police misconduct, the Division decided that two complaints involving the actions of one officer in two separate incidents warranted complete investigations. On May 27, 1992, it was concluded that the officer appeared to have employed unnecessary force in both incidents, that the arrests made were not warranted and that the department had failed to adequately investigate the complaints. Both complaints were referred to the Chief of Police and the Board of Selectmen for action. In one case, the Board decided that the officer required special retraining, but that no disciplinary action would be taken. The other case was not pursued by the Board due to the complainant's lack of cooperation. The Civil Rights Division continues to work closely with the Police Department and the Board of Selectmen in developing procedures to handle complaints and to reduce tension within the community. The new policies include a new disciplinary code and the creation of a Community Advisory Committee.

Commonwealth v. Adams, et al.

This was a civil suit filed in 1989 alleging that thirteen Boston Police officers had used excessive force during the arrest of a motorist following a chase which ended in Brookline. A two-week trial took place in January, after which the court issued a Permanent Injunction enjoining the thirteen defendants from the further use of excessive force while detaining, apprehending or arresting individuals. The injunction also holds the defendants accountable for failing to report visible injuries occurring during arrest or other officers who use excessive force. This is the first injunction issued against police officers under the Massachusetts Civil Rights Act, as well as the first known civil rights injunction in the U.S. against individual officers (rather than a department) enjoining excessive force, and requiring the reporting of other officers' use of excessive force, under threat of criminal penalties. The injunction has been temporarily vacated pending a full appellate review.

Commonwealth v. James K. Houlihan

A Lawrence police officer was indicted for alleged civil rights violations during an arrest of two Hispanic men in Lawrence. In July the defendant pleaded guilty to six misdemeanor charges--four counts of assault and battery and two counts of civil rights violations. He also resigned from the force. This case included a court ruling which denied an officer's attempt to dismiss indictments based on the Massachusetts State Constitution's guarantee against self-incrimination.

Other Police Related Activities

The Division engaged in a number of investigations related to complaints of police misconduct. In the complaints in which allegations were substantiated after investigations, five resulted in the referral of substantiated findings to the Chief of Police with a recommendation of disciplinary action and training. (Richard W. Cole, George Fisher, Andrea Cabral, Tania Gray). Two police departments also adopted model policies which were recommended by the Division after investigations identified potential policies or practices which might expose the departments to future liability.

In an effort to promote civil rights, assist the police, and to provide departments with technical assistance, the Division continues to provide an extensive amount of training to police departments throughout Massachusetts. Subjects of these trainings include the investigation and prosecution of hate crimes, issues of bias and prejudice, federal and state constitutional and civil rights laws, the civil liability of police supervisors and police officers, sexual harassment in the workplace, and the obligation of police departments under the newly enacted Americans with Disabilities Act.

BIAS-MOTIVATED INJUNCTION CASES/TRIALS/SETTLEMENTS

Commonwealth v. John Does

In October 1991 in Boston's South End, the defendants allegedly attacked three hispanic males with a steam iron and a leather coil. As they kicked and punched the victims, the defendants also yelled numerous racial and ethnic slurs. A Preliminary Injunction was issued on January 24, 1992, enjoining the defendants, two teenagers, from further harassing, intimidating or threatening the victims or any person in the Commonwealth based on their race or national origin.

Commonwealth v. Steven Kaplan

The defendant allegedly, on numerous occasions, directed racial slurs at a Cambodian family at the Revere Housing Authority. Between May and July, the victims' car was vandalized with racial graffiti, their house was shot at with a BB gun and other property was damaged. Because of fear of harassment, the children of this family were not allowed to play outside their house and the parents were compelled to take them to a park so that they could play safely. A Preliminary Injunction was issued on February 20, 1992, enjoining the defendant, under the Massachusetts Civil Rights Act, from further harassing, intimidating or threatening the victims or any person in the Commonwealth based upon the person's race or national origin.

Commonwealth v. Peter A. Costa

On July 4, 1992 in Provincetown, the defendant allegedly approached two men and violently shoved one of them backward while making anti-gay slurs. Later, the defendant threatened the victims, who were in their car, with physical violence. A Preliminary Injunction was obtained on October 20, 1992, enjoining the defendant under the Massachusetts Civil Rights Act from further harassing, intimidating or threatening the victims or any person in the Commonwealth based on their sexual orientation or perceived sexual orientation.

Commonwealth v. Bernard Vivolo

On July 15, 1992 in Boston's North End, the defendant allegedly assaulted a man with an umbrella. During the assault, the defendant yelled numerous obscenities and anti-gay slurs at the victim. A Preliminary Injunction was issued on November 2, 1992, enjoining the defendant under the Massachusetts Civil Rights Act from further harassing, intimidating or threatening the victim or any person in the Commonwealth based on their sexual orientation or perceived sexual orientation.

Commonwealth v. Leonard J. Iannantuoni

On June 21, 1992 at a park on the Avon/Brockton border, the defendant allegedly approached the victim and a fellow runner and began shouting anti-Semitic slurs at the victim. Shortly after the defendant had left, the victim and his friend resumed running. As they were running, they passed the defendant. The defendant struck the victim on the back of his neck and knocked him unconscious. The victim sustained injuries to his head, arms, legs and knees. The defendant had harassed the victim on a number of previous occasions. A Preliminary Injunction was obtained on November 3, 1992, enjoining the defendant under the Massachusetts Civil Rights Act from further harassing, intimidating or threatening the victim or any person in the Commonwealth based on their religion.

Commonwealth v. John V. Devaney, et al.

This civil suit sought a Preliminary Injunction against two defendants for allegedly assaulting two women at a Methuen bar while yelling anti-gay/anti-lesbian epithets. Parallel criminal charges were pending against the defendants as a result of the incident. Defendants sought to depose the victims and witnesses. The Commonwealth moved for a protective order seeking a stay of discovery until the criminal matter was concluded. The protective order was granted on September 18, 1992. This is the first ruling in Massachusetts which held that when there is a parallel criminal prosecution and civil rights injunctive action, a defendant will not be permitted to pursue civil discovery in the injunctive case until after the criminal trial occurs.

Commonwealth v. John Randolph

A Preliminary Injunction was issued against the defendant in July for his alleged continuous harassment of his Portuguese neighbors with threats and ethnic slurs. The Commonwealth requested that the court declare that the defendant had violated the Massachusetts Civil Rights Act, and that a Permanent Injunction be issued. After a three day trial in March 1992, the court issued a Permanent Injunction against the defendant.

Commonwealth v. Terrence Sullivan

A Preliminary Injunction was issued against the defendant on July 14, 1989 for his allegedly harassing, intimidating and threatening a Cambodian woman at a Burger King parking lot in Lowell by physically preventing her from entering the restaurant while yelling ethnic slurs. A two-day trial took place in July 1992, in which the Commonwealth sought a Permanent Injunction against the defendant, along with a declaration that the defendant had violated the Massachusetts Civil Rights Act. At the conclusion of the trial, the defendant decided to settle the case by consenting to the terms of a Permanent Injunction.

Commonwealth v. Donald Filkington, et al.

This case alleged that six defendants physically assaulted two men while yelling anti-gay slurs at them. The defendants were alleged to be members of a neo-Nazi hate group called the White Youth League. An injunction, effective for five years, was entered against each of the defendants through Consent Judgments.

Commonwealth v. Ismael Hernandez, et al.

Five defendants allegedly assaulted a man in Boston's Fens/Victory Garden section because of his sexual orientation. A Consent Judgment was entered against one of the defendants on March 8, 1990. A permanent injunction was issued against each of the remaining four defendants on February 2, 1992, through Default Judgments.

Commonwealth v. Kevin and Denise Foley

Defendants allegedly harassed a hispanic family and a black family with racial epithets and threats. An injunction, effective for three years, was entered against each of the defendants through Consent Judgments on May 5, 1992.

Commonwealth v. Carl Beldotti

The defendant allegedly harassed three men because of their sexual orientation. An injunction, effective for three years, was entered against the defendant through a Consent Judgment on May 5, 1992.

Commonwealth v. Harold Cue

The defendant allegedly harassed a Jewish woman with anti-Semitic slurs, threats, and graffiti. A permanent injunction was issued against the defendant through a Consent Judgment on May 26, 1992.

OPERATION RESCUE

Commonwealth v. Operation Rescue

After a two-week trial, a Permanent Injunction was issued in 1991 against members of Operation Rescue which prohibited the blocking of entrances to clinics which provide abortion services and counseling. During 1992 the Commonwealth charged several of the members with violation of the injunction. A trial of two of those defendants took place in December of 1992. On December 11, 1992, the jury found one defendant guilty and the other not guilty. The guilty defendant has been sentenced to serve six months on a two and a half year sentence.

The Division continues to be involved in ongoing training of police departments regarding the arrest and the booking of individuals who blockade clinics which provide abortion services and counseling.

The Division coordinated with the Boston Police Department to deal with and deter Operation Rescue from succeeding in an attempted month-long blockade of a clinic located in Boston.

HOUSING DISCRIMINATION CASES

Commonwealth v. Robert and Florence Dowd

This housing discrimination case was based on the complainant's marital status. A trial was held on November 3, 1991 and the court decided in favor of the plaintiff and awarded damages. During 1992, after further proceedings, the court also awarded attorney's fees to the Commonwealth. This is the first award of attorney's fees to the Attorney General in a housing discrimination case in which the court applied standards and rates for private attorneys. The attorney's fees claim is currently under appeal.

Commonwealth v. John J. Hannon

This case, alleging housing discrimination based on the complainant's sex, was filed in January 1992. In settling the case, the defendant agreed to pay compensation to the complainant and to enter a consent judgment enjoining him from discriminating in the future.

Commonwealth v. Norman Brettell Trust

This case, filed in 1991, alleged housing discrimination based on the complainant's section 8 subsidy status. The case was settled in July 1992. By the terms of the Agreement of Compromise, the defendant paid compensation to the complainant and attorney's fees to the Commonwealth. The defendant also agreed not to discriminate in the future.

Commonwealth v. Oak Hill Housing Company, et al.

This housing discrimination case was filed in May 1992. The suit alleged that the landlord failed to protect adequately a tenant from race-motivated harassment and retaliated against the tenant when she complained of the harassment. In settling the case, the defendant agreed (1) not to discriminate in the future and to protect its tenants from race-motivated harassment; (2) to establish a program to address racial tensions among tenants, train its employees to have greater sensitivity in issues involving race or color, and revise its policies so as to effect these goals; and (3) to pay compensation to the complainant. By the terms of the settlement, the Office of the Attorney General will monitor the implementation of the agreed-upon programs.

Commonwealth v. Samia Companies, et al.

This case, alleging housing discrimination based on the complainant's subsidy status, was filed in January 1991. The case was settled, by an agreement that the Defendant would compensate the complainant and would not discriminate in the future.

DISABILITY ISSUES

Since the effective date, January 1992, of Title II, the Americans with Disabilities Act (ADA), Division staff have spent a substantial amount of time conducting presentations and trainings concerning the effect of the provisions of the ADA. Groups to whom presentations were made include the Massachusetts Chiefs of Police Association, the Association of Human Service Providers, the Massachusetts Sheriff's Association, the Association of Town Counsel and City Solicitors. Division staff also prepared written materials on the ADA for distribution, including a Question and Answer article concerning requirements of Title II. Assistant Attorney General Stanley J. Eichner has also participated on the National Association of Attorneys General working group on the ADA.

Physical Access to Municipal Meetings

In 1991 the Attorney General wrote to all the cities and towns in Massachusetts informing them of their obligation to guarantee physical access to municipal meetings to their disabled residents. As a follow-up to the compliance of many cities and towns in 1991, in 1992 the towns of Whitman and Malden authorized renovations or relocation of their municipal meeting so as to provide access to disabled persons. Southbridge also agreed to relocate its town meetings until renovations occur, in response to a demand letter, which included the threat of litigation.

Other ADA Action

The Division worked cooperatively with the Administrative Law Division of the Office in resolving several group home disputes against municipalities (Hopkinton, Littleton, Lowell, Malden, Melrose, Needham, Springfield) to ensure, through enforcement of state and federal fair housing mandates, that group homes are not excluded from these communities. The Division is working with the Administrative Law Division to recommend modifications to the state building code to comply with the Federal Fair Housing Act of 1988.

The Division co-authored an article on group homes and Fair Housing issues for the town counsel newsletter.

CLUB DISCRIMINATION

A comprehensive settlement was reached with Veterans of Foreign War in Wilmington, based on a charge that the facility commander intentionally discriminated against a black man who was a non-member visitor to the VFW. As part of the settlement, the commander has been removed from his position.

The Division worked with the Secretary of Consumer Affairs and Alcoholic Beverage Control Commission regarding the promulgation of regulations to prohibit sex discrimination by golf clubs who hold liquor licenses.

EDUCATIONAL DISCRIMINATION

The Division formally advised the Westfield School Committee to vote against a resolution which would have barred teachers with "accents" from teaching in elementary classrooms. The Division advised the school committee that passing the resolution would be discriminatory, and potentially subject the district to legal action. Consequently, the resolution was defeated by the School Committee in July.

CREDIT DISCRIMINATION

Commonwealth v. GECAL

This case, charging credit discrimination based on sexual orientation, by a national consumer company, was settled in September 1991. The settlement included an award of damages and an agreement that future discriminatory practices will not occur.

OTHER DIVISION ACTIVITIES/INITIATIVES

Minority and Women Set Aside Programs

Assistant Attorney General, Bettye Freeman, was appointed as a co-chairperson of the Department of Transportation review committee regarding the minority and women set aside programs for the Harbor Tunnel Project.

The Division worked with the Essex County District Attorney's office and the Salem Police Department to deter repetition of organized harassment of witches in Salem.

The Division organized and coordinated a Hate Crime Study Group consisting of constitutional and civil rights advocates to discuss the susceptibility of the Massachusetts civil rights statute to constitutional challenge in light of the Supreme Court decision in R.A.V. v. St. Paul.

The Division participated as an active member of the Supreme Judicial Court Commission on Race and Ethnic Bias in the Courts, including involvement in public hearings.

As a member of the Governor's Hate Crimes Commission, the Division assisted in drafting regulations and developing and participating in training programs that concern reporting and investigating hate crimes.

As part of the annual Department of Mental Health Human Rights Conference, Assistant Attorney General Stan Eichner made a presentation on the work of the Office of the Attorney General challenging group home discrimination. The Division also gave a presentation on how federal and state fair housing requirement laws apply to group homes and residents at the Association of Town Counsels and City Solicitors' annual convention.

CONSUMER PROTECTION DIVISION

The Consumer Protection Division ("CPD") brings enforcement actions against businesses which use unfair and deceptive practices resulting in injury to consumers. Concentrating on cases which are in the public interest and specifically where consumers cannot reasonably obtain relief through their own efforts, CPD's caseload consists primarily of large-scale class actions brought on behalf of consumers affected in similar ways by the illegal activities of business. These activities include sudden business closings, retail advertising and sales, financial services, landlord-tenant and mobile home issues, automobile advertising and repairs, and nursing home services. CPD also drafted regulations and filed comments on legislative and administration matters. Through our Complaint Section we also mediated disputes between consumers and businesses.

Pine Hill Estates Mobile Home Park
(Commonwealth v. George A. Bumila, Sr., et al.)

On August 13, the Division filed suit in Southeast Housing Court against Pine Hill Estates Mobile Home Park in Raynham, for allegedly harassing and intimidating their mostly elderly residents. Some of the allegations in the complaint state that Pine Hill Estates and its owner, George Bumila, attempted to close the park illegally, continually harassed and intimidated park residents, enforced unfair and unreasonable park rules, fixed fuel prices, illegally discriminated on the basis of age, and destroyed Commonwealth wetlands. In addition to injunctive relief, the Attorney General is seeking civil penalties, costs, and attorneys' fees.

Avcar
(Commonwealth v. Hovey Eordekian, Jr., et al.)

On February 24, the Division filed suit in Middlesex Superior Court against two individuals, Hovey Eordekian and Brian Kitteredge, d/b/a AVCAR, who allegedly operated a phony business of selling the automobiles of private individuals for a sales commission, but never turning over the sales proceeds to the owners. The defendants also allegedly used, leased, or loaned consumers' cars to others without the owners' permission. The Attorney General is seeking a permanent injunction, restitution for consumers, civil penalties, and the cost of litigation and investigation.

Mystic Auto Wholesale & RRR Used Cars
(Commonwealth v. Marjorie Venditti)
(Commonwealth v. Dorco, Inc.)

On August 4, the Division filed separate suits against two used car dealers for violating the Massachusetts Used Car Lemon Law. Marjorie Venditti, d/b/a Mystic Auto Wholesale, is charged with violating the Consumer Protection Act by failing to comply with the order of a state certified arbitrator to repurchase a used car from a consumer under the state's Lemon Law. Venditti neither refunded the consumer's money nor appealed the decision to the District or Superior Court within the 21-day appeal period. In the second suit, Dorco Inc., d/b/a RRR Used Cars, repurchased the consumer's car, after the Division apprised the dealer of potential enforcement action. However, the company did not pay the $500 fine levied by the Executive Office of Consumer Affairs. The Division will ask the Court to require each dealer to pay the amount of the arbitration award, the $500 fine, a civil penalty of $5,000, and the costs of the action.

Greenwood Trust Co.
(Greenwood Trust Co. v. Commonwealth)

On November 4, the Division filed a petition for a writ of certiorari with the United States Supreme Court asking for the reversal of a Federal Appeals Court decision that allows Discover Card to impose $10 monthly late charges on its Massachusetts consumers. On August 6, the First Circuit Court of Appeals ruled that federal law allows Greenwood Trust Co., a Delaware Bank that issues the Discover Card credit card, to impose late charges on its Massachusetts consumers, and preempts a Massachusetts law which prohibits such late charges. More than 30 states prohibit or significantly limit credit card late charges. The Attorney General argued that the First Circuit's opinion, if allowed to stand, may have a dramatic impact on states' traditional ability to regulate all consumer lending practices, not just late charges.

Management Advisory Group
(Commonwealth v. Management Advisory Group, Inc., et al.)

On December 16, the Division filed a civil suit in Suffolk Superior Court against Management Advisory Group (MAG), an alleged venture capital finance firm located in Boston. MAG solicited small or new businesses needing investment capital and then failed to provide financing or any financial services. Individuals and businesses paid advance fees for services ranging from $3,000 to $39,500, but did not receive any investment capital or any refunds of those fees, even though demands for refunds were made to MAG. The complaint seeks permanent injunctive relief, restitution for victims, a temporary freeze of assets, civil penalties, costs, and attorneys' fees.

National Credit Union Administration
(Commonwealth v. Barnstable Community Federal Credit Union, et al.)

In December, the Division filed an emergency lawsuit against the National Credit Union Administration (NCUA) (successor to

Barnstable Community Federal Credit Union), developer William Dacey, and one of the developer's companies to try to enjoin the foreclosure of a consumer's home in Mashpee. The consumer had purchased a home from Mr. Dacey but never received notice of the foreclosure sale because neither the deed nor the purchase money mortgage from Dacey were ever recorded. Judge Cratsley of Suffolk Superior Court signed a Temporary Restraining Order, but we could not deliver notice in time to stop the foreclosure. We then filed a Motion for a Preliminary Injunction which Judge Cratsley granted thereby enjoining NCUA for 30 days from evicting the consumer or selling the home.

William J. Camuti

(Commonwealth v. William J. Camuti, et al.)

The Division filed a Complaint to Determine Dischargeability against Mr. Camuti in Bankruptcy Court, alleging that his unpaid judgment debt of $206,000 in c. 93A civil penalties and costs was not dischargeable under section 523 (a) (7) of the Bankruptcy Code. We had previously sued Mr. Camuti, the Loan Depot, and other corporations for contempt and further penalties under c. 93A for their failure to pay the judgment (entered after a c. 93A securities fraud lawsuit). On the eve of Mr. Camuti's trial, he filed his bankruptcy petition.

SETTLEMENTS/JUDGMENTS

Procter & Gamble -- Crest

(Commonwealth v. Procter & Gamble, Inc.)

On January 13, the Division reached an agreement with Procter & Gamble, makers of Crest toothpaste, in which P&G agreed to stop advertising cavity protection "down to the root" of children's teeth in a misleading manner. In a nationwide television commercial, P&G stated that Crest was "the first toothpaste clinically shown to protect you down to the root of the tooth." In support of its claim, P&G relied upon a test conducted on senior citizens, while the commercial focused on the effect of the use of Crest toothpaste on children's teeth.

P&G has deleted all root protection claims in a revised version of the commercial and has agreed to provide $50,000 to the Attorney General's "SCORE" program.

Sears Auto Centers

(Sears Roebuck & Co.)

On September 2, the Division joined with the Attorneys General in 43 states in a nationwide settlement with the Chicago-based Sears Auto Center. As part of the settlement, Sears has agreed to distribute $50 coupons to any Sears customers who had certain items installed in their cars from August 1990 to January 1992. Sears expects that the settlement will affect 41,566 Massachusetts consumers and result in more than $2 million in restitution. In addition, Sears has agreed to reform certain of its policies in order to avoid abuses in its auto repair practices.

Crescent Ridge Dairy

(Commonwealth v. Crescent Ridge Diary, Inc.)

On June 16, a Consent Judgment was filed in Suffolk Superior Court, settling a case that involved the Crescent Ridge Dairy and its fortification of milk with excessive amounts of Vitamin D. The case was referred to the Division by the Massachusetts Department of Public Health which had traced seven reported cases of Hypervitaminosis D to Crescent Ridge Dairy. The Judgment contains injunctive relief imposing numerous procedural and testing safeguards, prohibitions upon the dairy's misrepresentations of certain facts, and requirements that milk be tested by an approved independent laboratory once every two weeks. In addition, the dairy agreed to pay $60,000 in civil penalties and restitution for medical test costs incurred by uninsured consumers.

Contour Chair

(Commonwealth v. Contour Lounge, Inc.)

On February 12, CPD filed a consent judgment in Suffolk Superior Court against the marketers and former local distributor of the "Contour Chair." According to the complaint, Contour salespersons used a highly sophisticated, high pressure door-to-door sales operation which primarily targeted the elderly, the physically infirm, and the disabled. The complaint cites numerous unfair acts and misrepresentations by the defendants and their salespersons including: misrepresenting the usual sale price of their chairs by offering illusory discounts to make consumers believe they were getting a better price, advertising that purchasers would receive a TV or VCR with the purchase of a chair and then failing to provide the TV or VCR, refusing to disclose the usual sale price of the chair until the salesperson had finished a sales pitch in the consumer's home that often lasted 2 to 4 hours, and failing to honor warranties. The judgment prohibits the defendants and their successors from continuing alleged unfair and deceptive acts or practices, and it provides for the payment of $230,000, of which $215,000 will be used as restitution for consumers.

Carlyle House

(Commonwealth v. Carlyle House, Inc., et al.)

On November 9, the Division filed a Consent Judgment in Suffolk Superior Court settling a case brought against The Carlyle House, a Framingham nursing home, and the facility's owner and administrator. The case involved allegations of Medicaid discrimination and the improper discharge of Medicaid patients. Under the terms of the Consent Judgment, the nursing home is enjoined from various discriminatory acts targeting medicaid patients and from discharging or transferring patients without complying with state law. The defendants are required to pay $24,000. Four former patients will each receive $500, a sum calculated not to put their medicaid eligibility at risk, as "damages" for their improper discharges. The remaining $22,000 represent civil penalties.

Joy of Movement

(Commonwealth v. Joy of Movement, et al.)

On October 23, CPD entered into a Consent Judgment with Kenneth Estridge, president and founder of the Joy of Movement health club chain. The Division sued Estridge personally in addition to the Joy of Movement corporations in March 1991, when they abruptly closed their doors and failed to give refunds to Massachusetts consumers for membership dues paid in advance. Shortly after we filed suit, Estridge and his company filed for bankruptcy thereby preventing us from pursuing his case until the bankruptcy litigation was completed. When Estridge was discharged from bankruptcy, the Division pursued its case against him and negotiated an agreement with him whereby he would pay $45,000 to partially reimburse consumers who had filed complaints with the office. In addition, Estridge is barred from owning or operating a health club in Massachusetts for three years and thereafter must give notice to the office before he resumes owning or managing any health club in the state.

U.S. Funding

(Commonwealth v. U.S. Funding, Inc. of America, et al.)

On August 31, the Division agreed to a class action settlement of home owners' claims against U.S. Funding, Inc. of America, a large South Weymouth mortgage company now in bankruptcy. Under the settlement agreement, approximately $2.5 million in mortgage loans will be forgiven by the present holders of defective mortgages. Class members may also be entitled to other financial compensation from a fund of approximately $375,000. U.S. Funding had represented to consumers that the proceeds of refinanced mortgages would be used to pay off the prior debt. Instead, U.S. Funding made only partial or, in many cases, made no payment, leaving consumers with outstanding "unfunded" or "underfunded" loans. On February 26, 1993, Suffolk Superior Court Judge Patrick King will hold a hearing to see if the settlement is fair in light of the claims by consumers.

Commonwealth v. U.S. Fidelity Trust, et al.

The defendants in this case promised people on the verge of losing their homes in a mortgage foreclosure that by renting their properties to the defendants prior to the foreclosure sale, they would be able to remain in their properties at a fraction of the monthly mortgage payment. The defendants would rent the property from the homeowner at a nominal rate and then rent it back to the homeowner for about half of the homeowner's monthly mortgage payment. A consent decree was entered by the Court ordering the defendants to desist from their deceptive practices and to return to the victims of this scheme any payments made under the rental agreements.

GMAC Mortgage

(New York, et al. v. GMAC Mortgage Corp.)

On January 27, the Division, along with the Attorneys General of 11 other states, announced that General Motors Assistance Corporation Mortgage Corporation had agreed to stop alleged overcharges on

mortgage escrow accounts, make refunds and offer other economic benefits to consumers of approximately $100 million nationwide. The agreement will result in economic benefits of more than $1 million to GMAC's 4,000 Massachusetts mortgage holders. The 1990 lawsuit alleged that GMAC, the nation's fourth largest mortgage lender, overcharged its 400,000 mortgage holders' mortgage escrow accounts in violation of the Federal Real Estate Settlement Procedures Act of 1975 and overcharged consumers individual mortgage contracts. The company agreed to pay a total of $525,000 in costs to the states (including $70,000 to Massachusetts) that sued GMAC.

Atlantic West Mortgage Co.

This action, against the Atlantic West Mortgage Co., and its president Robert E. Ciardi, Jr., was settled by the simultaneous filing of a Complaint and Final Judgment in December of 1992. The complaint alleged that First Atlantic and Ciardi had violated the Consumer Protection Act by receiving more than two hundred thousand dollars in application and rate-lock fees for mortgages that were either not processed or never closed, and failing to refund these fees to consumers. Under the terms of the Final Judgment, Ciardi will pay $100,000 to the Commonwealth for restitution to consumers and for civil penalties.

Hilel & Ferreira

(Commonwealth v. Hilel & Ferreira Transfer Co., Inc., et al.)

On February 25, the Division obtained a court order from Judge Barrett of Suffolk Superior Court to distribute partial refunds to consumers who lost money in 1990 when the Hilel & Ferreira Transfer Co., Inc. failed to transmit over $219,000 deposited by consumers. Hilel & Ferreira dealt almost exclusively with Brazilian Americans who regularly forwarded portions of their income to family members in Brazil. In April 1991, the Division obtained a preliminary injunction enjoining the defendants from engaging in the foreign transmittal business and freezing the certificates of deposits which held the defendant's corporate bond. Following the February order, this office worked with the Commission of Banks to divide the $76,000 bond among the 42 consumers.

Bridge-Way Realty Trust

(Commonwealth v. Evelyn M. Trottier, et al.)

On September 9, the Division obtained a Consent Judgment in Suffolk Superior Court permanently enjoining Bridge-Way Realty Trust, an East Bridgewater land developer, from collecting deposits for subdivision lots without obtaining the necessary approvals required under the state's Subdivision Control Law. According to the terms of the judgment, defendant Frederick L. Smith, a beneficiary of Bridge-Way Realty Trust, will pay restitution of $80,000 to consumers who paid deposits for house lots in East Bridgewater. In addition, defendant Evelyn Trottier, individually, and as special administratrix of the estate of Joseph Trottier, will pay $208,097.50 for restitution to consumers along with interest, penalties, fees and costs.

American Woman and its President, William Menchaca
(Commonwealth v. American Fitness Center, Inc., et al.)

In September, the Division obtained a Final Judgment in Suffolk Superior Court against American Woman, a fitness center, and its president, William Menchaca, who accepted membership dues from consumers for the Taunton American Woman health club which he never opened. The Judgment states that Mr. Menchaca is barred from owning or operating a health club in Massachusetts for three years and thereafter must give notice to the Division before he resumes owning or managing any health club in the state. In addition, Menchaca paid refunds to consumers in the amount of $11,025 and paid $500 to the Division for costs of investigation and litigation.

Great Expectations
(Commonwealth v. Greatex of Mass., Inc.)

On July 16, the Division filed an Assurance of Discontinuance in Suffolk Superior Court in which Great Expectations, a Newton-based video dating service, agreed not to engage in high-pressure sales tactics. Great Expectations will also pay $20,000 to the Attorney General's Local Consumer Aid Fund. The Division had received over 60 complaints that charged Great Expectations with using various high-pressure sales tactics, such as telling the consumer the price would increase significantly if a contract was not signed immediately, resorting to taking consumers to an ATM machine so they could withdraw money to pay for a deposit, and denying refunds to most consumers who joined under these conditions.

Sonotone Hearing Aids Center, Corp. a/k/a Anna Gordon
(Commonwealth v. Sonotone Hearing Aids Center, Corp., et al.)

On July 22, a Final Judgment was entered in Suffolk Superior Court against Sonotone Hearing Aid Centers Corp. and its president, Anna Gordon. The order prohibits Anna Gordon from engaging in the practice of advertising and selling hearing aids and orders the payment of $29,681 in restitution for 56 consumers and $10,000 in civil penalties. The Bristol County District Attorney's Office also obtained an indictment against Anna Gordon on 47 counts of larceny. On December 3, Ms. Gordon was sentenced in Bristol Superior Court to 6-10 years in prison with one year to be served beginning December 3, 1993 plus an order to pay $400 per month in restitution.

Natick Auto Brokers
(Commonwealth v. John Paulini)

On November 4, the Division obtained approval of a judgment filed in Middlesex Superior Court against John Paulini, d/b/a Natick Auto Brokers, for violating the Massachusetts Used Car Lemon Law. Mr. Paulini had been charged with failing to comply with the order of a state certified arbitrator to repurchase a used car from a consumer under the state's lemon law. Mr. Paulini failed to refund the consumer's money or appeal the decision to the District or Superior Court within the 21-day appeal period. Paulini paid $3,902 in restitution, $1,250 in penalties, and $500 for the costs of the action.

Robert Johnson d/b/a Nissan of Marlboro
(Commonwealth v. Robert Johnson)

On January 30, this office obtained a consented to Final Judgment against Robert Johnson, d/b/a Nissan of Marlboro, for violating the advertising provisions of the Attorney General's motor vehicle regulations by prominently displaying the alleged sale price of certain motor vehicles without clearly disclosing that a trade-in worth at least $1500 or $1500 in cash would have to be provided by the consumer, in addition to the advertised sale price. The Judgment enjoined the dealer from future violations and required him to pay $3,500 in penalties and costs.

Commonwealth v. Stephen Thibault

In December, the office indicted Stephen Thibault on twelve counts of larceny over $250. Thibault was doing business as a kitchen and bath renovator under the name T'BO's, Inc. in the city of Everett. He allegedly stole over $90,000 in funds solicited over a three year period from customers for work that was never performed and products that were never delivered. The case first came to the attention of the office through the consumer complaint section. It is now pending in Middlesex Superior Court.

Quantum Tours/Robert Manoukian
(Commonwealth v. Robert Manoukian)

In August, a Middlesex Grand Jury returned a total of six indictments against Robert Manoukian who was charged with larceny and forgery in two separate cases. The indictments result from a joint effort by the Consumer Protection Division and the Criminal Bureau. In the first case, Manoukian was indicted on three counts of larceny over $250. The charges stem from a scam whereby Manoukian allegedly bilked 84 members of the Ladies Guild of St. George's Albanian Church out of $15,855. Manoukian allegedly promised round trip bus transportation, overnight accommodations and meals at various restaurants in New York, none of which were delivered. Manoukian refunded approximately $10,000 to the victims after complaints were made to the Consumer Complaint Section. In a separate case, Manoukian was indicted for allegedly using forged certified checks to pay for almost $20,000 worth of computer equipment.

Beverly Enterprises, Inc. (Greycliffe Nursing Home)
(Attorney General and Department of Public Health v. Beverly Enterprises, Inc.)

Beverly Enterprises, a nation-wide nursing home chain, violated licensure regulations by purchasing five Massachusetts facilities without having obtained necessary approvals. Investigation revealed that, in addition, Beverly had "paid" far more for the homes than the facilities' medicaid reimbursable basis could support, indicating that the homes were likely to encounter financial and patient care problems. In addressing the matter, we obtained an agreement pursuant of which Beverly refinanced the sales so that a total of $5,795,492 of debt were transferred from these homes to others owned by Beverly outside the state, paid approximately $500,000 of medicaid patient costs, and, in addition, paid a civil penalty of $39,000.

The New England Credit Co., Inc. (The Credit Doctor)
(Commonwealth v. New England Credit Co., Inc., et al.)

On February 18, the Division obtained a preliminary injunction in Suffolk Superior Court against The New England Credit Co., Inc. and its owner, Michael P. Kalil, who has been engaged in the business of auto brokering and credit repair. The company, also known as The Credit Doctor, and Mr. Kalil are prohibited from misrepresenting in their advertisements and business dealings that consumers can avoid repossession, or save or improve their credit rating by doing business with New England Credit. The injunction, issued by Judge Walter Steele in Suffolk Superior Court, also enjoins the company from engaging in a number of other activities, some of which are: failing to obtain the creditor's permission prior to brokering a subleasing transaction, failing to disclose to consumers that the operator's fee is non-refundable, and requiring owners to pay repossession fees and to sign waiver of liability contracts in order to recover their vehicles. Michael Kalil has ceased doing business in Massachusetts. Kalil recently filed for bankruptcy protection in New Hampshire. The Division is pursuing our claim against him in the U.S. Bankruptcy Court.

DEBT COLLECTION CASES:

Capital Credit Corporation

On June 29, the Division filed an Assurance of Discontinuance in Suffolk Superior Court in which Capital Credit Corporation agreed to abide by the Attorney General's debt collection regulations and to pay the state $144,000 in connection with alleged prior violations. Approximately one-third of the money paid by Capital Credit will support the Attorney General's "SCORE" program. Over the past two years, the Division received complaints charging that, in addition to other violations, Capital Credit Corp. told third parties about consumers' debts, threatened debtors that they would be thrown in jail, and requested or demanded that debtors send post-dated checks. Under the Assurance of Discontinuance, Capital Credit agreed to refrain from engaging in unfair debt collection practices in the future.

Filene's

On May 1, the Division filed an Assurance of Discontinuance in which Filene's department store agreed to refrain from engaging in unfair debt collection practices and to pay the state $75,000 in civil penalties. Over the past two years, the Division received complaints alleging that Filene's had violated the Attorney General's debt collection regulations in a variety of ways including telling third parties about consumer's debts, threatening certain actions that the creditor could not legally carry out, and continuing to call consumers at work after being requested to stop.

American Coradius, Inc. and Vengroff, Williams and Associates
(Commonwealth v. American Coradius, Inc.)
(Commonwealth v. Vengroff, Williams & Associates, Inc.)

On November 20, Suffolk Superior Court found that two New York debt collection agencies, American Coradius, Inc. and Vengroff, Williams and Associates, were in contempt of Final Judgments the Division obtained in 1991. The 1991 judgment enjoined each company from engaging in debt collection until they had obtained licenses from the Commissioner of Banks. At the time of the most recent violations, neither company had obtained the required license. The two companies were ordered to pay additional penalties and costs amounting to twenty times the sum they sought to collect from two consumers. American Coradius paid $17,500 and Vengroff, Williams and Associates paid $16,500.

Credit Convertors

On December 18, the Division reached an agreement with Credit Convertors of St. Paul, Minnesota, in which they agreed to refrain from engaging in certain unfair debt collection practices and from recording conversations with consumers without their consent. In addition, the debt collection agency has agreed to pay the Commonwealth $15,000 in civil penalties, which will be used to fund the SCORE program, and to modify and install a new telephone line so that Massachusetts calls will not be recorded in the future.

Three Out-of-State Debt Collection Agencies
(Commonwealth v. Credit Protection Association, Inc.)
(Commonwealth v. North American Collections, Inc.)
(Commonwealth v. Viking Collection Service, Inc.)

On December 18, the Division reached settlement agreements with three out-of-state debt collection agencies, Credit Protection Association, Inc., North American Collections, Inc., and Viking Collection Services, Inc. The companies collected debts without licenses from the State Banking Commission and Viking violated the Massachusetts' debt collection regulations by contacting a consumer debtor at work more times than is allowed by law. Credit Protection Association and North American Collections each paid $3,500, while Viking Collection Services paid $9,000 in penalties and costs for collecting debts without a license. In three separate consent judgments, each company is prohibited from acting as a debt collection agency in Massachusetts until it has applied for and been granted a license from the State Banking Commission.

Assurances of Discontinuance with 2 Debt Collectors: EZ Finance Company and Joseph Silva

On June 9, the Division filed an Assurance of Discontinuance with Suffolk County Superior Court in which EZ Finance Company, Inc. agreed to refrain from engaging in certain unfair and deceptive debt collection acts and practices. In addition, EZ Finance agrees to monitor the collection activities of any person or other entity to whom it assigns any debts for collection to ensure that such person or entity complies with the Assurance.

Also on June 9, the Division filed an Assurance of Discontinuance with Suffolk County Superior Court in which Joseph Silva agreed to refrain from engaging in the following acts and practices: (1) engaging in the collection of debts in Massachusetts without first obtaining from the Commission of Banks a license to carry on such business, and without having on file with the state treasurer a good and sufficient bond, and (2) using a business card which contains threatening statements of any kind.

MULTISTATE SETTLEMENTS

Multistate Environmental Group
(General Electric)
(Carlisle Plastics)

On November 9, the Division joined the Attorneys General of 32 states in a settlement with the General Electric Company concerning the claims that the company's "Energy Choice" line of light bulbs represents a new, environmentally sound product. The Attorneys General allege that GE made various misrepresentations about its Energy Choice light bulbs including statements that these light bulbs save energy and that using these bulbs could help eliminate pollution from the atmosphere. In fact, most of the energy savings realized from using Energy Choice incandescents are due to the fact that they are simply lower wattage bulbs, and not because they are significantly more efficient. The agreement required GE to pay $15,000 to each of the eleven original signatory states, including Massachusetts.

On March 11, the Division announced that ten states, including Massachusetts, have entered into a settlement agreement with Carlisle Plastics, Inc., concerning claims that the company's "Ruffies" trash bags are "degradable" and "compostable." The company allegedly made misleading claims that its Ruffies bags "will degrade in landfills" and that its yard waste bags are "specifically designed for municipal composting operations" and are "perfect for composting." The agreement requires Carlisle Plastics to pay a total of $45,000 to the ten states, including $4,500 to Massachusetts.

Multistate Food Group
(S&B International Corporation)

On October 8, the Division joined the Attorneys General from 10 other states in a $33,000 settlement with S&B International Corp., a California-based food manufacturer, which allegedly misled consumers about the monosodium glutamate (MSG) content of some of its seasoning mixes. S&B falsely claimed in radio advertisements and on product labels that its seasoning mixes contained no MSG, when, in fact, they contained hydrolyzed protein. The Attorneys General alleged that when a substance is hydrolyzed to create a hydrolyzed protein using the methods employed by food manufacturers, MSG is created.

OTHER INITIATIVES

SCORE

Project SCORE* (Student Conflict Resolution Experts) is a program through which the Division provides funding, training, and technical assistance for the development and implementation of peer mediation programs in urban schools. These programs, which use trained students to mediate school-based conflicts, were designed particularly to respond to increases in violence and racial tensions in the targeted cities.

In 1992, new SCORE programs were started in Boston and Fall River which, added to the existing programs in Somerville, Worcester, Lowell, and Springfield, brings the total number of SCORE programs to 15 schools in 6 cities. Over 400 disputes were mediated by these programs; 96% resulted in written agreements; only a handful of these agreements were broken.

In addition to developing peer mediation programs, SCORE monies were used to fund two basic mediation skills trainings for staff and youths in the Department of Youth Services and one for fourteen youths in Revere who belong to fueding Cambodian gangs.

When racial violence broke out in Medford High School in early December, SCORE funds were used to restore peace and safety to the school. Funds will also be used to develop a SCORE program at the high school beginning in January, 1993. SCORE is a program sponsored by the Massachusetts Attorney General and is not affiliated with any private business enterprise.

Elm Medical Laboratories

(Commonwealth v. Elm Medical Laboratories, Inc.)

On July 27, Massachusetts Appeals Court upheld a permanent injunction obtained by the Division which prohibits two individuals who formerly supervised Elm Medical Laboratories from supervising a medical lab. The Court agreed with our argument that the laboratory had violated the Massachusetts Consumer Protection Act by improperly and inadequately performing pap smears and other tests, and further agreed that under this law a laboratory is required to disclose to doctors and patients material information about the laboratory's practices that could render its diagnoses inaccurate. The Appeals Court also held that the state is not a person subject to suit under the Civil Rights Act -- an important decision for the government bureau and other state agencies.

Telephone Carrier Agreement

In May 1992, Attorney General Harshbarger, along with 35 other state Attorneys General, entered into a voluntary agreement with AT&T, MCI, and Sprint for the carriers to better monitor and potentially to discontinue services of "900 number" offerings which are carried on their networks. This cooperative effort along with recently enacted federal regulations can help curb "900-number" telephone fraud.

Cite Your Rights Cards

In October, the Division released the first set of "Cite Your Rights" cards designed to teach consumers basic consumer rights in the areas of store return policy, defective goods, automobile lemon laws, security deposits, and a half dozen other areas. Distribution of the cards is through the 8400 line and local consumer programs.

Adoptions of New England

(Commonwealth v. Adoptions of New England)

A petition was filed and granted in Suffolk Superior Court, in March for the appointment of a receiver to take over the records of and guardianship proceedings underway for Adoptions of New England, Inc., following the suspension of the company's license by the Massachusetts Office for Children. The corporation's officers and directors resigned when an audit showed that Adoptions of New England had a deficit of approximately $900,000 and left the state to return to their main base in Arizona. The abrupt closure of the agency left a waiting list of 30 families who had paid as much as $27,000 in advance deposits for babies who never arrived for Adoptions of New England, Inc. clients.

NURSING HOME CASES:

Wayne Manor Nursing Home

(Department of Public Health v. Wayne Manor Nursing Home)

In February, a patient protection receivership, obtained by the Consumer Protection Division to protect approximately 73 ill or mentally disabled patients living in Wayne Manor, a Dorchester nursing home, was terminated by the transfer of the facility's ownership to Family Rehabilitative Services, Inc. The successful transfer of the home to a licensee found suitable to operate it ended a long saga which began by the Division's seeking the dismissal of the bankruptcy proceeding to protect patients. At that time, the patients' health was in serious jeopardy: the utilities, the provision of food and other goods and services were about to be cut off and the bankruptcy trustee wanted to quit. The receiver brought the home back up to health care standards. We then negotiated for the bank holding the first mortgage on the property instead of a new owner to pay $62,900 to the Commonwealth to resolve successor liability issues and thus facilitated the sale by reducing its auction price. The former owner, Barbara Cohen, was subsequently indicted and convicted on multiple charges of embezzlement of patient funds, larceny and Medicaid fraud, by the MFCU.

Harvard Manor Nursing Home

(Department of Public Health v. Harvard Manor Nursing Home)

On November 23, following the termination of the Harvard Manor Nursing Home's federal Medicaid funding, the Consumer Protection Division intervened to have a patient protector receiver appointed for the nursing home. The appointment of the receiver was sought by the Attorney General to ensure the patients' health and safety, since the withdrawal of federal funding resulted in the loss of 50% of the funds which cover the costs of patients' care. The decision to terminate the nursing home from the Medicaid program resulted from a finding by the U.S.

Department of Health and Human Services that the patients were living in harmful conditions at the facility.

Brockton Ridge Long-Term Care Center, Regent Park Long-Term Care Center
(Department of Public Health v. Brockton Ridge Long-Term Care Center)
(Department of Public Health v. Regent Park Long-Term Care Center)

In individual actions commenced and conducted separately, we had obtained the establishment of patient protector receiverships for the Brockton Ridge and Regent Park nursing homes, both operated by Avanti, Inc. but owned by a California real estate partnership. Patients had been subjected to mistreatment and neglect. This year, Brockton Ridge, a home that had, among other problems, 30 beds located below ground level, was closed, much to the dismay of the owners while Regent Park was successfully sold to another operator/owner. The termination of both receiverships, the first by closure and the second by transfer and sale, effectuated the office's goal of protecting the patients in the manner most calculated to improve the quality of life. The property owners were obliged to pay $64,275 for penalties and the costs of the Brockton Ridge receivership and another $100,000 when Regent Park was sold.

REGULATIONS

Mortgage Lender and Broker Regulations

The Attorney General's regulations under c. 93A governing mortgage lenders and mortgage brokers were published in May and took effect on August 1, 1992. The regulations require that all brokers and many lenders provide borrowers with standardized copies of the Attorney General's Mortgage Broker and Lender Disclosure forms, which identify the essential features of a mortgage loan transaction as well as the cost and interest rate for the borrower. The regulations also require that lenders and brokers take reasonable steps to assure that borrowers, including non-English speaking consumers, understand the loan transaction. Unconscionable rates or other loan terms, advertising ploys such as "immediate approval" and "immediate closings," are prohibited, and the use of other advertising terms such as "bad credit, no problem" and "avoid foreclosure," are restricted. These regulations were promulgated to prevent future abuses involving second mortgages or refinancing, while creating a level playing field for legitimate businesses.

LEGISLATION

Home Improvement Contractor Law

This law regulating home improvement contractors was signed on December 31, 1991, and took effect on July 1, 1992. The law prohibits home improvement contractors from acting as mortgage brokers or lenders in connection with the home improvement contracts they enter into, requires a written contract for any job over $1,000, requires that contractors register with the Bureau of Building Regulations and Standards, establishes a guaranty fund to provide limited restitution to consumers who have been defrauded by a registered contractor but are unable to collect on a judgment, and provides for criminal penalties for those who fail to obtain a certificate of registration. An additional bill designed to streamline the process for injured consumers to obtain access to the "guaranty fund" is not expected to pass this session.

Purchase Privacy Law

On March 26, 1992, the purchase privacy law which restricts the personal information that retailers may demand when they accept payment from consumers by check or credit card took effect. The measures, which are intended to protect the consumer from fraud, prohibits the recording of information other than the consumer's name, address, motor vehicle license number, and the consumer's choice of home or business number when the consumer pays by check. The merchant can no longer record the consumer's social security number, race, or credit card number on a check or elsewhere. The law also prohibits the merchant from requiring that the consumer sign a statement allowing his/her credit card to be charged if the check is not honored and from accessing the consumers credit card account to determine the amount of available credit when the consumer is paying by check. The law also protects a consumer who pays by credit or charge card by prohibiting the recording of information on the credit card slip other than that which is required by the credit company.

SPRINGFIELD CASES

Commonwealth of Massachusetts v. Basement Waterproofing Nationwide, Inc.

The Attorney General obtained a default judgment against the defendants in this case. $379,000 default judgment.

Commonwealth v. New England Uses Cars, Inc.

The complaint is ready to be filed. This is also an action to enforce the provisions of the Used Car Warranty Law.

Commonwealth v. Valley Furniture

This is an action alleging unfair and deceptive acts and practices in the conduct of a "going out of business sale." Settlement is imminent and will result in the distribution of nearly $105,000 in consumer restitution. Settlement agreements should be signed before 1993. We have agreed that they will pay $104,014.62 in consumer restitution and contribute $25,000 to the local Consumer Aid Fund.

Commonwealth v. West End Market

This is an action alleges unfair and deceptive acts and practices in the conduct of a meat market. The defendant in this matter closed down shop. This mater is still ongoing. Injunction vs. meat market arising out 93A violations.

LOCAL CONSUMER PROGRAMS

FACE-TO-FACE MEDIATION PROGRAMS

The Local Consumer/Mediation Services (LCMS) administer the Local Consumer Aid Fund (LCAF) of the Office of the Attorney General. The LCAF was created by statute, G.L. c. 12, §11G, in 1977. At the present time, nineteen community based Local Consumer Programs and seven Face-to-Face Mediation Programs are grant recipients of the Fund, which is directed to the resolution of consumer complaints. Technical assistance and continuing training are given to the programs by the staff of the LCMS.

These programs, which serve all 351 communities in the Commonwealth, annually resolve thousands of consumer problems, and serve to educate consumers and businesses alike in the areas of state and federal consumer law. Working in cooperation with the Office of the Attorney General, they also alert this Office to patterns of unfair or deceptive acts and practices in the marketplace, so that appropriate legal action may be taken.

In fiscal years 1992 and 1993, the General Court appropriated $605,901 for the Local Consumer Aid Fund. Ten percent of these grant monies were retained by the Office of the Attorney General for administrative purposes. Supplemental funding from settlement of consumer cases was also given to the programs, and for FY 1992, this supplemental funding resulted in grants to the local programs of $666,500.00, and in 1993, grants of $701,100 will be distributed. In 1992, the Local Consumer Programs mediated over 12,000 complaints, recovering over $2,665,657.00 in goods and services for consumers. The Programs also fielded over 83,000 inquiry calls on various issues, both consumer and non-consumer. Each caller was either given self-help information, or directed to other appropriate state or federal agencies.

ENVIRONMENTAL PROTECTION DIVISION

Amesbury Circuit

A complaint and consent decree were filed against Amesbury Circuit Co. of Amesbury in May 1992. Allegations of the illegal discharge of wastewater into the Amesbury sewer system was resolved by a consent decree requiring the company to pay a $100,000 penalty and to install a wastewater treatment/recycling facility.

Paul Revere

This is a Clean Waters Act case involving problems discovered at a condominium development in Millbury constructed with inadequate septic systems. EPD sought far-reaching relief, including a freeze on assets and the voiding of fraudulent conveyances, as against developers who have no continuing interest in the project. The defendants include individual officers of the corporate developer, as well as the transferees of the property alleged to have been fraudulently conveyed. A preliminary injunction entered in July 1992, requiring pumping of certain of the condominium development's septic systems. A preliminary injunction also enjoins the transfer of assets by the developer defendants and by certain fraudulent conveyance defendants. Interlocutory review has been denied and discovery is going forward.

This case, referred by Food and Agriculture and by Fisheries and Wildlife, involved the misuse of pesticides in a cranberry bog, resulting in a fish kill. A Consent Judgment was entered on August 5, 1992 enjoining the use of pesticides until a water management plan is in place and imposing a $30,000 penalty.

Massachusetts Military Reservation/Otis

This matter involves the enormous problem of the environmental contamination at the 22,000 acre Massachusetts Military Reservation (MMR) on Cape Cod. The identified 52 acres of environmental contamination at and around MMR exists in various forms. The most serious threat is to water supply; 21 existing municipal wells and several private ones are threatened. Nine significant plumes of underground contamination have been identified.

MMR is a National Priorities list site, and the Department of Defense, as the lead agency, has designated the National Guard Bureau (NGB) to conduct the cleanup. NGB, EPA and the U.S. Coast Guard (the current tenant at some contaminated portions of the site) executed a Federal Facilities Agreement (also known as an IAG, or Interagency Agreement) in July, 1991, which the Commonwealth did not sign. The IAG set up a timetable for cleanup.

NGB has failed to meet its goals in the first year under the IAG, and modifications to the IAG's schedule have been proposed. The Commonwealth submitted comments on the IAG to EPA and NGB in November 1992, stating its concerns over the lack of a comprehensive and enforceable long-term plan for remediation at MMR and the failure of NGB to meet the cleanup schedule, and suggesting that the Commonwealth take a more active role in re-negotiating the cleanup schedule.

Other forms of pollution at the site include air pollution from the burning of propellant bags. In large part through the efforts of this office, this practice has been stopped.

Municipal wastewater treatment cases

(1) New Bedford: Together with the United States, in February, 1991 the Division filed a motion to enforce a consent decree relative to the construction by the City of New Bedford of a new wastewater treatment plant. We have also opposed New Bedford's motion to modify the decree (which was filed on the grounds that the state has reneged on its "commitment" of 75% of the necessary funding under the State Revolving Fund). In response to the governments' motion to enforce, New Bedford agreed to construct the plant, solicit bids, and has commenced plant construction. The over-all schedule and the amount of stipulated penalties to be paid have been agreed to, and we are in the process of finalizing the language of a modified decree.

(2) Gloucester: The United States District Court entered a consent decree in 1992 requiring the City of Gloucester to eliminate illegal discharges of raw sewage in North Gloucester by extending its sewer system to this area. The decree imposed a deadline of January 31, 1993, for the City to move to modify the decree if it can find another method of solving North Gloucester's water pollution problem that protects the environment as the new sewer system would. In response to notice by Gloucester that it would move to use step sewers and a subsurface disposal system instead of the sewer system, the Commonwealth and the City agreed to modify the Consent Decree to allow for alternatives to conventional sewers. This agreement provides that the City shall undertake a study to determine whether innovative subsurface disposal systems may be used in a portion of North Gloucester and requires the City to develop a management plan that ensures the long term operation and maintenance of alternatives to conventional sewers. A joint motion to modify the Consent Decree in accordance with this agreement will be filed on January 29, 1993.

(3) Plymouth: A final judgment was entered in this case in 1991 requiring the Town of Plymouth, among other things, to pay $30,000 to the Massachusetts Environmental Trust and to construct a new treatment plant in accordance with a schedule. The judgment also provided that the Town would not allow any new sewer connections or extensions. In late 1992 the Town and the Commonwealth agreed to modify the judgment to allow the new county prison to hook up to the sewer and the Town to discharge an additional 50,000 gallons of sewage per day to the treatment plant after certain system modifications were accomplished.

Teknor Apex

This case initially involved extensive multi-media violations, including air and water violations in a manufacturing company in Attleboro. A consent decree was entered on August 25, 1992 requiring the payment of an $850,000 penalty and an investment of over $2 million in environmental improvements, including requiring the company to install water and air pollution equipment, to apply for necessary air and water permits, to do a G.L. c 21E assessment and to reduce toxics in its manufacturing processes.

MWRA cases

Three MWRA pre-treatment cases, alleging failure to treat waste properly before discharging to the sewer system in violation of the Clean Waters Act and regulations have resulted in consent judgments filed in September 1992, requiring the payment of penalties totaling $215,000. These cases were brought against Regalite Plastics Corporation in Newton, Lapuck Laboratories in Watertown and Laser Photonics in Bedford. In addition, the Division filed a matter in May 1992, involving the Army Natick Labs. In that case, Commonwealth v. Cheney, et al., we sued the federal government for allegedly discharging mercury and other pollutants from the labs into the Massachusetts Water Resources Authority sewer system, in violation of the federal Clean Water Act. The suit is pending.

New England Power Company

The case, concluded in Suffolk Superior Court in July 1992, arises from New England Power's alleged use of an inadequate chlorination system at its Brayton Point facility, and a resulting fish kill. The consent decree requires payment of $500,000 in penalties and environmental damages, including $75,000 to the Atlantic State Marine Fisheries Commission for a striped bass management plan, and also requires "targeted chlorination," to reduce substantially the use of chlorine. The resolution of the case is notable, in part, for its source reduction aspects.

Leahy

A consent decree was entered in this illegal septage disposal case in Holden in July 1992 which requires payment of $135,000, including $30,000 to the Massachusetts Environmental Trust for an education project and $5,000 to the Holden Conservation Commission.

WETLANDS PROTECTION

Chatham

Four different suits have been filed by Chatham residents, raising questions regarding the legality of DEP's coastal wetlands regulations, which limit construction on certain coastal property. The first two cases have now been resolved. In the third case, Wilson, the plaintiffs are seeking compensation for the loss of a home as a regulatory taking. The Appeals Court ruled in January 1992 that plaintiffs could pursue their "takings" claims without exhausting their administrative remedies. In August 1992, the SJC granted the Division request for further appellate review and reversed the Appeals Court on the taking claim, holding that there could only be a taking if there was unreasonable agency delay. The case was remanded for further proceedings.

In the fourth case, Nelson, which raises a substantive due process claim, a single justice of the Appeals Court upheld the denial of the plaintiffs' request for a preliminary injunction. In addition, the Superior Court ruled in our favor on summary judgment and plaintiffs have appealed. The Nelson case has been fully briefed and is pending in the Appeals Court. We are working with the environmental agencies and the Town of Chatham in an attempt to develop a long-term solution to the coastal erosion problems.

Urkiel

This case, alleging illegal filling and alteration of wetlands in Deerfield, was filed in early February, 1992. A preliminary injunction and an attachment for $100,000 (to secure penalties) was entered in mid-February. The case is now pending in Franklin County Superior.

Scannell

We obtained a preliminary injunction in June on an emergency basis in a case involving the opening of "great ponds" on Nantucket. This is a historical practice which involves digging of trenches between the ponds and the ocean. The judge warned the defendant that he would not hesitate to hold him in contempt for any violation of the order. The defendant had engaged repeatedly in opening of great ponds to the sea, with attendant destruction of enormous areas of wetlands and habitat. The Court granted our motion for summary judgment in December 1992, but judgment has not yet formally entered.

Holm

The Division obtained a TRO in August of 1992 and then a preliminary injunction from Suffolk Superior Court enjoining certain on-going wetlands violations in Gardner, Mass. The injunction is now being violated, and a complaint for contempt is being prepared.

Lucas v. South Carolina Coastal Council

Last winter EPD signed on to Florida's amicus brief in the United States Supreme Court, arguing that South Carolina's regulations governing coastal construction do not constitute a taking. Since the Supreme Court's decision in the case in June 1992, we have been active in advising our client agencies and other groups about the applicable regulatory issues, and in developing a "proactive" litigation agenda for the office.

Massachusetts Association of Conservations Commissions (MACC)
The MACC and our office have set up a referral and screening system whereby individual conservation commissions, through MACC screeners, can refer cases to us to be evaluated for possible action.

AIR POLLUTION

Multi-state ozone suit against EPA
This action, involving several states, environmental groups and the named plaintiff American Lung Association, settled for the relief sought -- an agreement by EPA to initiate a rule-making to review its 1979 national ambient air quality standard for ozone. (Milkey)

Multi-state suit against EPA under the Clean Air Act
The multi-state and environmental groups' federal court suit against EPA seeking the promulgation of certain Title V regulations under the Clean Air Act was mooted by EPA's promulgation of those regulations last summer.

Findley
This air pollution case involves a defendant in bankruptcy. In January 1993, the bankruptcy court approved our settlement with the company that calls for the $100,000 penalty involved in this matter to be treated as administrative expense. As a direct result of our lawsuit the company has begun the process of bringing its emissions of dichloro-
difluoromethane and ethylene into compliance with the Clean Air Act.

Halfmoon
In July 1992, the New York Siting Board voted to grant a certificate to construct and operate the Halfmoon project, a coal-fired cogeneration facility, on condition that the applicant resolve its power contract disputes with the public utility by December 31, 1992. Unable to meet this deadline, the applicant received an extension of about 60 days (subject to certain contingencies). Even if the issues are "resolved" in time, the Division will continue to press both procedural and substantive issues concerning the power contract and environmental impacts from the project in a court appeal. Already our participation has forced the applicant to improve its project, resulting in substantial reductions of SO2 and NOx.

Conrail
This hotly litigated case is the first in the nation to challenge the freight rail industry's practice of continuous idling of its diesel locomotives. In May 1992 the Superior Court entered a preliminary injunction enjoining Conrail's idling of engines during the summer months. Conrail then moved, unsuccessfully, to dismiss the case on preemption and other grounds. Conrail's request for interlocutory review of the denial of its motion to dismiss was denied by a single justice of the Appeals Court. The Division continued to pursue its claims which include an injunction against winter idling. The entry of a judgment in the case would be significant because of its potential to serve as a national model for anti-idling measures.

Bay State Smelting

The Division filed this case in the end of 1991 against Bay State Smelting, located in Charlestown. A permanent injunction addressing extensive air pollution (illegal operation of smelting equipment and an incinerator), hazardous waste and workplace safety compliance issues was entered against the corporate defendant in March 1992. The defendant has now completed the cleanup of the subject plant. The penalty portion of the case is still to be decided, but the entire civil action has been stayed by the Court pending the Criminal Bureau's determination of whether to seek indictments.

Motor Vehicle Manufacturers Association

As anticipated, the auto manufacturers brought suit in U.S. District Court in the Northern District of New York to challenge New York's adoption of the California auto emissions standards. Joined by five other states, the Division wrote an amicus brief in opposition to the manufacturers' motion for summary judgment and in support of New York's motion for summary judgment. The brief was filed in November 1992 and a decision is expected in January 1993.

California tailpipe regulations

After extensive consultation with us, DEP has adopted the California low emission vehicle standards. These new and extremely significant regulations are more stringent auto emissions standards developed to combat ozone non-attainment and to help achieve compliance with the Clean Air Act.

HAZARDOUS MATERIAL/WASTE

New Bedford Harbor

April 21, 1992, the first two settlements in this matter against several companies whose actions contributed to the PCB contamination of New Bedford Harbor are final, and the last of three consent decrees, for $21 million, was lodged in the federal court. This brought the current total recovery to approximately $110 million. We have begun to receive payments pursuant to the first two settlements. Depending on the choice of remedial measures, between 22 and 33 million dollars will be allocated to natural resource damages, between 57 and 68 million dollars will go towards cleaning up the harbor and the adjoining wetlands area and 17 million dollars will be allocated to the reimbursement of the governments' past costs. In June 1992, the state and government prevailed in the First Circuit against the National Wildlife Federation, which had sought a determination that the settlements are invalid.

Circle K

Circle K is a convenience store/gas station chain with 4000 stores nation-wide, which is currently in bankruptcy proceedings in Arizona. Fifty of the stores are in Massachusetts, and thirty-five of them are contaminated with gasoline released from leaking underground storage tanks. The Commonwealth has filed a proof of claim for $9.5 million. The Commonwealth and four other states are preparing to appeal to the Ninth Circuit Court of Appeals a ruling by the U.S District Court in Arizona upholding the U.S. Bankruptcy Court's decision to allow Circle K to reject its leases and avoid environmental liability. Settlement negotiations are on-going.

Commonwealth v. Karam (a/k/a First Church)

This case involved the leaking of underground gas tanks from a gas station into a nearby church in Weymouth. We succeeded in obtaining a ruling from the Superior Court that (1) the doctrine of administrative record review applies in cases under the pre-amendment G.L. c. 21E; and (2) there is no right to a jury trial in such cases. The case is very close to a full settlement now that we have secured the agreement of a bank to finance the obligations of the principal defendants to pay the Commonwealth's response costs and to perform additional site cleanup.

McMahon v. Amoco

A consent judgment was filed and approved by the Barnstable Superior Court under which the Commonwealth will receive $1.8 to $1.9 million, and the Town of Provincetown about $1.2 million, to reimburse them for their out-of-pocket costs incurred to remediate an underground gasoline storage tank leak that threatened to contaminate the Town's principal wellfield. The Commonwealth's share also includes funds for future clean-up costs.

Charles George

A settlement was reached with all but the George defendants in this major CERCLA case which was filed in the U.S. District Court in Massachusetts in 1985. The settlement provides for over $35 million in costs and damages, of which over $12 million will go to the state. The consent decree for this settlement was lodged with the Court on December 29, 1992. The thirty-day public comment period was extended because of an error in the Federal Register and will end March 1. A trial against the George sons and the land trust defendant is also scheduled for March 1, 1993. We have obtained summary judgment against Charles George, Sr., Dorothy George, and the Charles George Trucking Co.

Mendon Road

This litigation is on-going in the U.S. District Court. It is a cost recovery action under CERCLA and G.L. c. 21E. The Commonwealth is seeking $2 million in cleanup costs incurred to remediate a site in Attleboro contaminated with cyanides. By order dated December 20, 1992, the Court granted summary judgment as to the liability of the operator and transporter of hazardous waste. The Court has remanded the administrative record to DEP for supplementation, and has rejected the defendants' argument that they are entitled to de novo review on issues related to DEP's cleanup decisions and the reasonableness of its costs. The case is one of the first to address whether a federal court must limit its review of state agency decision making under CERCLA.

Sullivan's Ledge

Sullivan's Ledge is a National Priorities List site in New Bedford that has been divided into two sections. A consent decree was entered in 1991 as to the first section of the site. The second section, contaminated mostly with PCB's, is a wetlands area. A consent decree requiring the responsible parties to pay $30,000 (100% of past costs) recently was negotiated in January 1993 as to the second section. Once signed by the Department of Justice, the consent decree will be lodged with the U.S. District Court. This case is notable as the first one in which a mediator was used in a Commonwealth/EPA Region I National Priorities List case.

Silresim

The Silresim Superfund Site is a five-acre abandoned chemical waste recycling facility located in Lowell, Massachusetts, listed on the National Priorities List. Throughout 1992 the United States and the Commonwealth negotiated a consent decree with 230 responsible parties, whereby the responsible parties will pay $41 million in a cash settlement for site remediation. This amount covers 100% of the future estimated cleanup costs. The proceeds have been placed in an escrow account. As soon as the Department of Justice signs the consent decree, it will be lodged with the U.S. District Court. The Commonwealth also has signed an allocation agreement with EPA under which the Commonwealth will receive $15 million.

Barnstable underground storage tanks

The Division is assisting the Barnstable County Board of Health in developing an approach to enforcing state statutory and regulatory requirements that underground storage tanks be reported and tested for leaks. We have sent a letter to over thirty identified non-compliers advising them to comply with the law or risk the filing of enforcement actions, and we are participating in publicity about the registration program. All but five tank owners have responded to date and have either tested or removed their tanks. The Division is now proceeding to draft a complaint to file against the unresponsive owners.

SOLID WASTE

Lowell Landfill

This case, involving what DEP has characterized as the worst municipal landfill in the state, has been resolved with a consent judgment entered in June in the Suffolk Superior Court. By the terms of the judgment, the landfill ceased operation at the end of 1992 and will be capped.

Hyde Park landfill

In a suit filed in April, the Division obtained a preliminary injunction enjoining operation of this unpermitted landfill and freezing the assets of its owners and operators. Discovery is underway to determine what materials were actually disposed of at the site, and to develop a position as to the appropriate amount of penalties and the final form of injunctive relief.

Town of Webster

In a major defensive effort on DEP's behalf, we prevailed on summary judgment in a challenge to DEP's procedures and decision regarding the siting of a proposed large landfill in Douglas. The Suffolk Superior Court held in August 1992 that DEP had acted properly, in accordance with applicable law, and upheld its decision approving the site assignment.

General Electric

This case involved past hazardous waste disposal practices, specifically dumping photo-chemical waste down a sink, in part of G.E.'s Fitchburg plant. The complaint and consent decree were filed simultaneously in February. A consent decree was entered, whereby the company agreed to pay $250,000 in penalties and $75,000 for an educational program addressing environmental issues posed by photochemical waste.

ENERGY CASES

Eastern Energy

We obtained a significant victory in this case in the Supreme Judicial Court in August. The Court set aside the siting of a 300 megawatt coal-fired electric cogeneration facility in New Bedford on the grounds that the Energy Facilities Siting Council (now Siting Board) failed to follow its own statute. The Court held that the agency failed to require the comparison of the proposed plant to a full range of available energy resource alternatives, failed to perform the proper balancing of permissible statutory goals, failed to adequately state the grounds for its decision, and did not properly address the correct methods for assessing need for new power and the effects on costs to the ratepayers. The case is now on remand to the Board, with hearings on-going. We have prepared extensive expert testimony to demonstrate that (1) there is no need for the plant, and (2) even if need were assumed, there are other alternatives to the plant (e.g., conservation and load management, or cleaner fossil-fuels and fossil-fuel based technologies) that will be better for the environment. The case will be heard concurrently with the Silver City Energy Limited Partnership (Taunton) case, which will address essentially the same issues.

Silver City Energy Limited Partnership (Taunton)

Hearings before the Energy Facility Siting Council on an application for permission to construct another coal-fired power plant, this one of 150 megawatts, were held concerning the Eastern Energy decision. These hearings primarily focused on the issue of need. Extensive expert testimony was presented to forward our position that there is no need for new power plant capacity in the region until the end of this decade, at the earliest. Hearings are on-going in this matter, and the case has been consolidated with Eastern Energy for the taking of evidence.

Environmental Externalities (with RID)

The DPU issued a favorable decision in November of 1992 affirming the use of externality values in resource acquisition by Massachusetts utility companies. This means that electric companies must take into account the real direct and indirect costs incurred by the use of new resources that would be borne by ratepayers and the rest of society as a result of the facilities' environmental impacts. Such impacts include increased health care expenses, economic effects on property and agricultural resources, and a reduced quality of life. The goal of the DPU's policy is to ensure that competitive resource solicitations result in the selection of resources that are truly the least cost to society.

MISCELLANEOUS

Manville

Suit was brought in the U.S District Court in the Southern District of New York in 1985 against Johns-Manville ("Manville"), formerly the largest manufacturer of asbestos-containing products in the United States, for the costs of abating asbestos in certain public Massachusetts buildings. Manville, which had earlier filed for bankruptcy protection, was required to establish a Property Damage Settlement Trust (the "Trust") for the benefit of building owners who had filed claims for damages against Manville. The Trust was required to establish procedures for the payment of claims.

During 1992, $1,005,113 was received from the Trust as a partial payment of the Commonwealth's damages.

Ackerley

In the settlement of a dispute over unlicensed billboards, Ackerley agreed last March to remove 96 billboards located primarily in Roxbury and Dorchester and to pay $46,870 in back permit fees to the Outdoor Advertising Board.

Comments filed:

1. With the Nuclear Regulatory Commission. The Division submitted comments to the Nuclear Regulatory Commission, opposing regulations that would adopt a Generic Environmental Impact Statement for all nuclear plants that seek to renew their operating licenses. We also signed on, with several other state attorneys general, to two letters urging EPA to repromulgate on an emergency basis its "mixture" and "derived-from" rules, under the Resource Conservation and Recovery Act. EPA did so.
2. On NRD regulations. Together with EOEA, we commented on NOAA's status report on its proposed rules for natural resource damage assessments under the Oil Pollution Act of 1990.
3. Concerning Federal wetlands. The Attorney General, and Secretary of Environmental Affairs, Susan Tierney, joined together in submitting formal comments to the EPA in opposition to the proposed revisions to the 1989 "Federal Manual For Identifying and Delineating Jurisdiction Wetlands," as well as in submitting objections to the proposal to incorporate those revisions into the regulations governing the federal wetlands protection program.

PUBLIC CHARITIES

The Attorney General represents the public interest in the proper solicitation and use of all charitable funds. The Attorney General is authorized to "enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof." G.L. c. 12, § 8. The Division of Public Charities is established by G.L. c. 12, § 8B to carry out the Attorney General's responsibilities in this area.

The Attorney General's enforcement role extends across the spectrum of charitable activity in order to protect charitable donors from diversion and waste of funds, and to ensure that the beneficiaries of charitable funds receive the intended benefits. Through the Division of Public Charities, the Attorney General takes enforcement action (i) to ensure that charitable funds held by trustees and charitable organizations are used properly, and (ii) to protect the public from deceptive and fraudulent fundraising practices. In addition, the Attorney General is an interested party in the probate of each estate in which there is a charitable interest and in legal actions to modernize the provisions of philanthropic bequests.

To further protect the public interest in this area, more than 28,000 charities are registered with the Division, as well as over 180 fundraisers operating in Massachusetts. A charitable organization is one which is nonprofit and whose purpose is to benefit a portion of the public; in addition to philanthropic organizations, examples of public charities include nonprofit hospitals, schools, social service providers, and cultural organization. As well as registering and obtaining financial reporting by charitable organizations and fundraisers, the Attorney General is the defendant in all proceedings brought in the Supreme Judicial Court to wind up the affairs of a charitable organization.

SOLICITATION OF CHARITABLE FUNDS

Commonwealth v. GMC Advertising, Inc.; Gerald Cantazaro

Granting a contested motion for summary judgment, Judge Zobel permanently banned charitable fundraising by this Somerville-based solicitation company and its president, Gerald M. Cantazaro, and ordered payment of $500,000.00 in penalties, the largest fine ever obtained by the Attorney General in a contested fundraising case. This action was brought as a result of the defendants' unlawful solicitation of charitable funds on behalf of state police unions through the deceptive sale of advertisements to local businesses. Judge Zobel's fundraising ban is the first such order in a contested lawsuit. Deceptive practices included telephone solicitations in which callers masqueraded as police officers and local public officials; representations to donors that failure to make a contribution could subject the donor to police reprisals; and misrepresentations that funds raised would promote local charitable causes.

Commonwealth v. David Gargano, et al.

Judgment was obtained in this civil and criminal contempt action filed against David Gargano, the ring leader of a fraudulent fund-raising group which raised more than $200,000 in charitable donations by impersonating police officers and other law enforcement officials. The court ordered Gargano to pay $100,000 in civil penalties and permanently barred him from engaging in telemarketing activities of any kind in Massachusetts. Concurrently, the Criminal Bureau prosecuted Gargano on larceny and deceptive solicitation charges, to which he pleaded guilty and was sentenced to three-and-one-half years to five years at MCI-Cedar Junction.

Commonwealth v. Disadvantaged Workers of America, et al.

A consent judgment entered in this case required the defendants, including two Tennesee-based corporations, their officers and directors, to pay $70,000 in civil penalties and permanently enjoined them from engaging in future deceptive charitable telemarketing. The defendants, who had solicited charitable funds in Massachusetts through the sale of household items, failed to disclose at the outset of their sales presentation that Disadvantaged Workers of America is a for-profit entity; its sales persons do not have disabilities; and that purchases are not tax deductible.

Commonwealth v. The Way Home, Inc., et al.

As the result of a consent judgment in this case, a Hingham man agreed to dissolve The Way Home, Inc., a corporation he used to solicit charitable funds through false representations that donated monies would be used to benefit Plymouth-area shelters for the homeless and for other charitable purposes. He also agreed to pay civil penalties, refrain from deceptive solicitation practices, and to refrain from serving as a board member of any charitable organization that does not have at least five other members who are not related to him or to each other.

Commonwealth v. Kenneth Singer

In a judgment obtained in this civil contempt action, a Stoughton man who was the sole director and employee of Nationwide Productions, Inc. was ordered to pay $50,000 in civil penalties and was permanently enjoined from engaging in charitable solicitation in the Commonwealth or sitting on the boards of charitable organizations. Among other things, the defendant sold $100 tickets to an awards dinner ostensibly held as "a tribute to the most neglected segment of our society, the HANDICAPPED," and as a way to provide "'ROLE MODELS' to other disabled people," while disguising the true purpose of the event - which was to provide himself with a source of income. This contempt action was prompted by Singer's violation of two prior court orders.

Global Entertainment & Richard Garden

"The Big Circus" has permanently folded its tent in Massachusetts, after a consent judgment was obtained against a Sarasota, Florida corporation and its owner. In this case, the defendants approached non-profit groups in the Commonwealth, offered to raise funds for them by putting on circuses, and later cancelled the shows after tickets had been sold. In addition to a permanent injunction prohibiting future circus promotions or charitable solicitation campaigns, the defendants agreed to pay restitution to two organizations who sold tickets for the circus in an effort to raise funds.

Commonwealth v. Chosen Children Foundation

The court has ordered the officers of this charity for handicapped children to turn over control of the Foundation's assets and operation to a temporary receiver, in order to ensure that funds solicited are used for charitable purposes. In bringing this case, the Division seeks, inter alia, to enjoin permanently the Defendants from engaging in deceptive solicitation practices through the pervasive placement of coin collection cans in stores across New England and telephone advertising of sales throughout the country. Misrepresentations made in the course of these solicitations have included statements intended to cause potential donors to believe their donations would support Make-A-Wish, an unconnected and well-established charity, and false representations that monies collected would be used for charitable purposes, when, in fact, they were used for personal enrichment.

Commonwealth v. Elite Systems, et al.

Following an investigation conducted in conjunction with the Registry of Motor Vehicles, in October 1992, the Division filed a complaint and obtained an agreed-to preliminary injunction prohibiting the defendants in this deceptive solicitation case from engaging in charitable fundraising until further notice. The complaint alleges that the defendants deceived the public by masquerading as inspectors with the Registry, State Fire Examiners office and local fire departments; made coercive suggestions of favorable treatment in return for a donation; and falsely represented that funds raised would be used for charitable purposes, when, in fact, they were used for personal enrichment.

Commonwealth v. Massachusetts Homeless Foundation, et al.

In January 1992, a preliminary injunction was obtained by agreement in this case against two Boston-based solicitors and the charity they allegedly used as a front for their telemarketing business. The injunction prohibits the defendants from engaging in illegal charitable fundraising tactics; bars operation of the Massachusetts Homeless Foundation (the charity allegedly controlled and managed by its for-profit fundraiser); and requires the defendants to account for money previously raised.

Commonwealth v. Suffolk County Sheriff's Department

Filed on December 16, 1992, along with an agreed to preliminary injunction, this complaint alleges that Suffolk County Correction Officers Local 419 and their professional fundraiser violated the state's charitable solicitation and consumer protection laws during their phone solicitation campaign. Paid fundraisers allegedly misled potential donors to believe they were calling from the Sheriff's Department, the union, or Boston area hospitals and that their donations would benefit hospital pediatric wards. The preliminary injunction prohibits further deceptive solicitation.

Commonwealth v. R.H. McKnight, Inc., et al.

During 1992, the Division defeated a Motion to Dismiss brought on behalf of Robert H. McKnight, individually, in this deceptive solicitation case. Defendant R.H McKnight, Inc. is a professional solicitation company which conducts fundraising for various police and fire organizations throughout the country, by the telephone sale of advertising space in publications or ad books it publishes. This action, which alleges that in the course of telephone solicitations McKnight employees falsely led donors to believe they were law enforcement personnel and that funds obtained would benefit local police departments, also names as defendants the corporation's president and a supervisory employee.

ESTATES AND TRUSTS

Fuller Trust, Inc.

Settlement reached in this matter resolved a dispute with the Attorney General concerning the trustee's expenditure of almost all of the Fuller Trust's liquid assets on pre-development costs, including sizeable legal fees paid to law firms to develop a life care community on property owned by the Trust. The Division obtained the resignation of two trustees, both lawyers with prominent Boston area firms, and repayment by those attorneys of $250,000, each, to the Trust. Established under the will of Caroline Weld Fuller, the Trust's original purpose was to provide housing for women in need of a home at a reasonable expense. In 1988, the trustees obtained authorization to proceed with development of the life care community, which has yet to be built. It was the position of the Division that the trustees' actions caused the development of the facility to stall and become more difficult to accomplish.

At the present time, the Fuller Trust is in receivership and successor trustees have been presented to the Court for appointment. With the infusion of one-half million dollars and the appointment of new trustees, it is anticipated that the trust will be able to carry on its purpose.

Lynch, et al. v. Attorney General, et al.

Judgment was entered on a cy pres petition developed in consultation with the Division, allowing the transfer of the 600-acre Ravenswood Park and its endowment, created in 1889 under the will of Samuel E. Sawyer, to The Trustees of Reservations (TTOR). The world's oldest land trust operating on a statewide or regional basis, TTOR manages 72 other open space reservations and wildlife refuges in the Commonwealth.

Walnut Hill School

Developed in consultation with the Division, this deviation petition filed by the Walnut Hill School in Natick sought authority to sell a parcel of land adjacent to the school and to use the proceeds for capital improvements and endowment. A favorable judgment was entered.

Baybank South v. Attorney General (Part I)

Partial summary judgment was obtained in this cy pres action arising out of cessation of operations at the Massachusetts Osteopathic Hospital. In granting the Division's motion, the Court found that general charitable donative intent will permit a three million dollar gift establishing the Florence Robertson Trust to be applied cy pres at the cessation of hospital operations. Part II of the case will concern selection of a successor beneficiary to receive trust income.

Worcester City Hospital

A cy pres petition developed in consultation with the Division, on which a favorable judgment was entered, shifted the use of hospital land formerly utilized for operation of an acute-care hospital to use as a general health care facility.

Estate of Marion Mavrogenis

This probate matter involved a will contest arising out of the decedent's murder, arranged by the person named executor and trustee of her substantial estate, and who also received a legacy under her will. Acting to protect the charitable interest in scholarships established under the will, the Division arranged a compromise agreement for allowance of the will and appointment of new fiduciaries, including the Eastern Bank and Trust Company of Salem as co-trustee. As a result of the compromise agreement, scholarships should be awarded beginning in 1993.

DeTorrijos, et al. v. Miliora, et al.

The Division successfully intervened in this civil action, thereby ensuring that charitable assets contained in the Theosophical Society Trust are protected while issues of internal governance are litigated.

CHARITABLE CORPORATIONS

Bay State Health Care, Inc. v. Attorney General

Bay State HMO, a registered charitable organization, was failing financially. As a strategy for the HMO's survival, Bay State and the Division of Insurance settled on dissolution of Bay State and a transfer of assets and designated liabilities to Blue Cross-Blue Shield. This Division reviewed the proposed transaction and negotiated changes in it, while keeping communications open with concerned hospitals and other providers. The Division filed an answer and assent stating that the Attorney General concurred with the judgment of Bay State and the Division of Insurance that the proposed transaction was the last and only feasible alternative available for resolving this emergency in an manner that assured uninterrupted service to Bay State's plan members, and that the terms of the transaction were necessary in order to continue this health care coverage without imperiling the financial stability of the transferee, Blue Cross-Blue Shield. Because time was of the essence, the Division also intervened to oppose attempts, one in Middlesex Superior Court and one in the SJC Single Justice session, to stop the transaction. The SJC Single Justice approved the transaction, and Bay State was dissolved with assets and designated liabilities transferred to Blue Cross-Blue Shield.

Berkshire Health Systems, Inc.

After a lengthy investigation by the Division, Berkshire Health Systems, Inc. (BHS), a hospital and health care system providing acute and long term care for residents in western Massachusetts, entered into an agreement committing its board and senior management to substantial reform of its corporate governance and oversight practices. The reforms agreed to by BHS include (1) restructuring of the board nominating process to achieve diversification reflecting that of the community; (2) term limits for board members to assure turn-over; (3) tightened conflict of interest rules; (4) heightened scrutiny of executive compensation packages; and (5) establishment of an audit committee and other financial controls. To mitigate the widespread public perception that the board had been secretive about its governance and management practices, BHS agreed to make the nine-page agreement public.

Isabella Stewart Gardner Museum v. The Attorney General, et al.

The Gardener Museum sought court approval to alter its premises by building a gallery on the first floor of the museum for periodic exhibits of art works not already owned by the museum. Court approval was necessary because of the provision in Isabella Stewart Gardner's will prohibiting the trustees from moving any art object or bringing in any art objects not already on display in the museum. The museum contended that the space in which it wanted to build the gallery did not fall within the prohibition. After investigation the Attorney General agreed with the allegations of the museum that such a gallery did not violate the provisions of the will and were necessary in order to more effectively carry on the purpose of the museum. Court authorization to build the gallery was granted in August 1992.

New Bedford Glass Museum v. The Attorney General, et al.

Voluntary dissolution of this financially-troubled museum involved complicated issues relating to the proper distribution of the museum's glass collection and archival materials. The Attorney General is a necessary party to all dissolutions of charitable corporations, in order to assure that the reasons for dissolution are appropriate and that the distribution of any remaining assets are to a similar charity. With the Division's guidance, the museum followed a procedure which invoked both trust law and ethical codes governing museum collection management in order to identify proper beneficiaries. The Supreme Judicial Court ordered the collection to be distributed according to the museum's plan and dissolved the museum in August 1992.

Commonwealth v. Resthaven Nursing Home

On January 28, 1992, a hearing on receiver fees effectively ended the Division's involvement in the 12 year receivership of a non-profit nursing home, originally obtained due to financial disarray and to protect residents from inadequate care. Although initial patient care issues were resolved by 1980, the nursing home remained in receivership due to default on its mortgage, repeated state decertification efforts, compounded by Medicaid reimbursement strictures, a lack of capital funds, and costs

and labor problems associated with its location in a high-crime area of Roxbury. Along with the Rate Setting Commission, the Department of Public Health, and the Welfare Department, the Division negotiated a plan to end the receivership and the parties submitted to the Court a stipulated consent judgment ending the receivership.

Omnibus Dissolutions

This year the Division continued the recently revived practice under G.L. c.180, §11B of effecting dissolution of groups of charitable corporations which are (i) inactive, (ii) have no assets, and (iii) have never had other than nominal assets, or have not had assets for more than two years. These actions serve a dual purpose in that they relieve corporate directors of ongoing liability or responsibility for their corporations and serve as a means of purging inactive files from the Division's records. Thirty charitable corporations were dissolved this year and another fourteen are to be the subject of a dissolution petition filed in December 1992.

SIGNIFICANT DIVISION INITIATIVES

Second Annual Giving Season Campaign: "Give But Give Wisely"

On November 17, 1992, the Attorney General announced the 1992 "Give But Give Wisely" public education campaign, a joint effort undertaken by the Attorney General, the Better Business Bureau and other interested organizations.

Utilizing a radio PSA and professionally designed "Give But Give Wisely" brochure and logo, this second annual Giving Season program seeks to inform individuals and businesses about the donating process and how to make sure that their charitable contributions are put to the best possible use.

In conjunction with the campaign kick-off, the Division also issued: (i) the second annual "Report on Charitable Fundraising," analyzing the 1991 financial reports of 128 fundraising campaigns by professional solicitors (an average of 28% of funds raised were actually received by the charities); and (ii) the "Attorney General's Guide for Charities Who Fundraise from the Public."

Division Administration and Statistics

Enforcement of laws requiring accountability by public charities is central to the Division responsibilities with respect to charitable funds. With the exception of religious organizations and certain federally chartered organizations, all public charities must register with the Division and all registered charities must submit annual financial reports. The registrations and financial reports are public records and public viewing files are kept. The Division responded to over 2,320 requests to view files in 1992 and, in response, 5,570 files were pulled.

Charitable Organizations: Registration and Enforcement

In calendar year 1992, 1,652 new charitable organizations were reviewed, determined to be charitable, and registered. The Division also processed 11,183 annual financial reports and collected annual filing fees totalling $284,815.00 during this period.

As part of its ongoing registration and filing enforcement program, the Division contacted approximately 2,050 charities whose annual filings were deficient or delinquent to rectify filing problems.

Charitable Solicitation: Registration and Enforcement

In addition to required annual filings, every charitable organization which intends to solicit funds from the public (other than religious organizations) must apply to the Division for a solicitation certificate and pay a fee before engaging in fundraising activity, pursuant to G.L. c. 68, §19. The Division reviews applications for compliance and must issue a certificate within 10 days, unless the application is deficient. In 1992, 4,961 certificates were issued and $51,330.00 was received in fees.

All persons acting as professional solicitors, fundraising counsel, or commercial co-venturers on behalf of soliciting charitable organizations must also register annually and pay a registration fee. In addition, solicitors must file a $10,000.00 surety bond prior to engaging in charitable solicitation. In calendar year 1992, the Division registered 65 solicitors, 120 fund raising counsel, and 19 commercial co-venturers, resulting in fees of $2,040.00 to the Commonwealth.

Dissolutions

To enforce the public interest in the disposition of charitable assets, the Attorney General is a party to all voluntary dissolutions of charitable corporations under G.L. c.180, §11A. After review of proposed pleadings and negotiation of necessary modifications, the Division assented to 62 final judgments dissolving charitable corporations.

Wills, Trust and Probate Matters

Under statutory and common law, the Attorney General is an interested party in the probate of all estates in which there is a charitable interest and in all other judicial proceedings affecting charitable trusts. In enforcing the due application of charitable funds and preventing breaches of trust, the Division regularly reviews new wills and other trust documents, taking action to protect the public interest where necessary.

In 1992, 1,650 new wills were received and reviewed, of which 1,348 contained charitable bequests. In connection with the review process, inquiries were made in response to 491 citations giving notice of petitions for the appointment of executors which were received without copies of the will.

After review by the Division, assents were given to 909 final accounts of executors and trustees, 139 petitions for the sale of real estate, and 70 petitions seeking the termination of a trust, 83 new cases involving probate litigation were opened, and an additional 70 existing matters in litigation were active during the year. These cases included will contests and petitions for *cy pres*, deviation, instructions and declaratory judgments.

The Division also represents the Treasurer of the Commonwealth with respect to the public administration of interstate estates for which no heirs have been located. During calendar year 1992, 236 such estates were closed after review of

either the final account of the public administrator or the proof of heirs submitted to the Division. With respect to 35 of these estates, property escheated to the Commonwealth. The total amount received and remitted to the Treasurer's office was $242,935.00. 128 other miscellaneous public administration matters were also handled during the year.

Form PC Revision

With the assistance of a working group from the Public Charities Advisory Committee, the Division conducted a thorough review and revision of the primary reporting form utilized annually by public charities - the Form PC - and its attachments. Significant changes include the new requirement that Federal form 990 EZ be filed in place of the PC Schedule B, which has been eliminated, and the elimination of the requirement that investments be reported and certain types of investment transactions explained. The goal of this effort was to streamline the PC Form and focus it more sharply on relevant information which is either not reported at all to the Internal Revenue Service or not reported in adequate detail. For example, the new form strengthens disclosure of executive compensation and of related party transactions. As a result of this effort, and working through the National Association of State Charity Officials, the Division also played a major role in convincing the IRS to propose adopting the compensation reporting requirement nationwide.

Draft Probate Uniform Practices

This year the Division, assisted by a working group from the Advisory Committee, developed a series of proposed Uniform Probate Practices covering those circumstances under which notice of a probate proceeding must be given to the Attorney General and those in which he must be made a party to the action. In the experience of the Division, there have been extreme variations in practice among the probate courts and registries with respect to these requirements. The proposal has been approved by the Administrative Committee of the Probate Courts and will be published for pre-adoption comment in the spring.

Legislative Filings

New statutory filing fees, based on legislation drafted by the Division, were enacted in the FY 1993 state budget. A new sliding scale for charities ranges from $35 for organizations with gross income of $100,000 or less, to $250 for organizations with gross income over $500,000. New fees for fundraisers are $300 for solicitors, $200 for fundraising counsel, and $50 for commercial co-venturers.

The Division submitted a re-draft of its pending legislation to comprehensively revise the charitable solicitation statute. Among other changes, the pending legislation would:

* Require fund raisers to provide more financial information about a solicitation campaign, such as including good faith estimates of revenue, expenses and the charity's net proceeds in contracts, submitting monthly financial reports to the charity, and filing financial reports with the Attorney General at the end of every solicitation campaign.
* Prohibit charitable solicitation by fund raisers who have not filed the required financial reports.

* Clarify the responsibilities of charities by requiring that the compensation paid to the fund raiser be fair and reasonable to the charity and by prohibiting the charity from giving control or management of its affairs to its fund raiser.
* Prohibit misrepresentation as to the amount or percentage which will be received by the charity. (Allen, Soris, Lund, Gale)

Conference Presentations and Publications

In July, Division Chief Dick Allen submitted a chapter entitled "The Role of Attorney General's Office Regarding Public Charities and Fundraising" for publication in the upcoming MCLE book Massachusetts Nonprofit Organizations. Division attorneys also made a number of conference presentations during 1992 to groups including the Massachusetts Bar Association, Boston Bar Association, Massachusetts Library Association, National Society of Fund Raising Executives, Commonwealth Society, United Way, and the Professional Firefighters Association.

NASCO President Initiatives

Dick Allen served as the President of the National Association of State Charity Officials in 1992. Initiatives included fostering a closer working relationship between the regulators and the charitable sector, a renewed focus on charity stewardship issues, a national amicus brief opposing the discovery of a national confidential newsletter, convincing IRS to propose adoption of the Division's executive compensation disclosure requirement nationally, and testimony at the request of the Senate Select Committee on POW/MIA affairs. Responsibilities included planning and chairing the annual NAAG/NASCO charitable trusts and solicitations national conference.

REGULATED INDUSTRIES DIVISION

UTILITIES RATE CASE

Cambridge Electric Light Company, DPU 92-250

Cambridge Electric Light Company, a subsidiary of Commonwealth Energy System which serves the metropolitan Cambridge area, has requested an increase in its electricity rates of $10.1 million or 9.3 percent. Such an increase, if allowed, would raise the monthly bill of a residential customer who used 450 kwh per month by approximately $4.95. Rate design, intra-company cost allocations, rate of return and efficiency of management are all issues under review and subject to discovery at the present time. Hearings are due to start on February 1, 1993 and be completed by the end of the month. The Attorney General's Initial Brief, setting out the position of the Office, is set to be submitted on March 26, 1993. A decision by the Department of Public Utilities (the first major decision of its new Chairman) on the proposed increase is due out on May 31, 1993.

Western Massachusetts Electric Company, DPU 92-8C-A

The Attorney General intervened in the DPU's annual performance review of Western Massachusetts Electric Company's (WMECo) generating plants. WMECo's nuclear generating units performed poorly in the June 1, 1991 to May 31, 1992 review period. Millstone Units 1, 2, 3, and Connecticut Yankee produced only a fraction of the total electricity they could have generated. (24.9%, 57.7%, 36.5% and 53.6% respectively). WMECo's performance falls far short of the DPU's established goals of 76.5% for the Millstone Units and 84.2% for Connecticut Yankee. Although still in the discovery phase, the Attorney General will seek refunds of replacement power costs charged to customers that resulted from the plants failure to generate. Hearings are scheduled to commence in May 1993.

Massachusetts Electric Company, DPU 92-78

In March 1992, Massachusetts Electric Company (MECo) filed a request for a $66 million or 4.8% increase to its base rate revenues. The Attorney General represented ratepayers at 16 days of hearings before the DPU during the four weeks beginning June 4, 1992. In September 1992, the DPU allowed MECo a $45.6 million or 3.3% increase in its rates.

Berkshire Gas Company, DPU 92-210

In October 1992, the Berkshire Gas Company filed a request for a $2.4 million or 5.45% increase to its base rate revenues. The Attorney General represented ratepayers at 12 days of hearings before the DPU during the four weeks beginning December 3, 1992. Following submission of briefs, a decision from the DPU is expected by April 1, 1993.

New England Telephone and Telegraph Company, DPU - Mass - 10

On August 14, 1992, New England Telephone (NET) filed revisions to be effective January 1, 1993, to its Tariff No. 10 that would introduce Circuit 9 Service, a call management service which, among other features, includes Automatic Number Identification (ANI). The Attorney General on November 30, 1992, filed a letter requesting that the DPU suspend and investigate NET's filing as it relates to privacy issues raised by the provisioning of ANI. The DPU on December 23, 1992, approved the revisions. However, NET must first develop a customer notification program for the DPU's pre-approval before the service is offered. Once service is offered, NET must take certain steps relating to privacy and blocking.

Boston Edison Company, DPU 92-92

In April 1992, Boston Edison Company filed a request for an $87 million or 10% increase to its base rate revenues. The Attorney General represented ratepayers at 23 days of hearings before the DPU during the five weeks beginning June 15, 1992. The DPU accepted a Partial Settlement filed by the Attorney General, BECo and the Division of Energy Resources which avoided any rate increase for the first year, and limited rate increases in the two following years to $29 million (less than 2.5%). The Settlement also expanded eligibility for residential low income rates and instituted performance incentives for BECo's fossil fuel generating units as well as the Pilgrim nuclear plan.

Western Massachusetts Electric Company, DPU 91-290

In December 1991, Western Massachusetts Electric Company (WMECo) filed a request for a $37 million or 9.1% increase to its base rate revenues. The Attorney General represented ratepayers at 17 days of hearings before the DPU during the four weeks beginning February 24, 1992. The DPU accepted a Partial Settlement filed by the Attorney General and WMECo which limited rate increases in the two following years to $12 million and $11 million (about 3% and 2.7%).

Eastern Edison Company, DPU 92-148

In June 1992, Eastern Edison Company (EECo) filed a request for a $16 million or 8.2% increase to its base rate revenues. The Attorney General represented ratepayers at 15 days of hearings before the DPU during the four weeks beginning August 24, 1992. The DPU accepted a Partial Settlement filed by the Attorney General and EECo which limited the rate increase to $8.1 million and further limited the increase to residential customers to 1.1% overall (including demand-side management costs). The Settlement also expanded eligibility for residential low income rates.

AT&T Relaxed Regulation

AT&T asked the DPU to reduce regulation of almost all of its intrastate Massachusetts services. The Attorney General presented the testimony of William G. Shepherd, Chairman of the Economics Department at University of Massachusetts at Amherst, that such reduced regulation was premature and would hinder the development of a freely competitive market. Notwithstanding that testimony and its prior decisions maintaining full regulation of AT&T, the DPU allowed the AT&T petition.

Ocean State Power Company II

The Attorney General intervened at the Federal Energy Regulatory Commission (FERC) to oppose the rates proposed by the owners of the Ocean State II (OSPII) power plant in Rhode Island. The rates affect Massachusetts ratepayers because OSPII sells power to Boston Edison Company and to affiliates of Massachusetts Electric Company and Eastern Edison Company. The FERC allowed the proposed rates, even though the Petitioners did not satisfy FERC standards on self-dealing (adopted since the inception of the project) which require that projects selling to companies affiliated with owners must show that proposed rates are comparable to rates based on a competitive market.

Montaup Electric Company

The Attorney General intervened at the Federal Energy Regulatory Commission (FERC) to oppose the change proposed by FERC Staff in the allocation of savings and generating costs following the merger of Montaup Electric Company with Newport Electric Corporation. Although the merging companies had contracted to allocate the bulk of savings to Montaup based on its much larger generating capacity, the FERC found that Montaup and Newport must split the savings. This decision has the effect of adding about $1 million annually to Montaup's costs, most of which will be collected from the ratepayers of Eastern Edison Company.

Bay State Gas Company, DPU - 92 - 111

In April 1992, Bay State Gas Company filed with the DPU tariff schedules of proposed rates and charges designed to increase the Company's annual retail gas revenues by $20,646,572 or 7 percent. The Attorney General intervened in the case before the DPU on behalf of the ratepayers of the Commonwealth. Eighteen days of evidentiary hearings were held at the Department beginning June 23, 1992. As a result, the DPU issued its order on October 30, 1992, allowing Bay State Gas to file new schedules of rates and charges to produce additional gross revenues of $11,523,418.

Customer Owned Coin Operated Telephones Settlements

In September 1992, the Attorney General filed with the DPU 14 settlement agreements that were reached with the Customer Owned Coin Operated Telephones (COCOT) against whom earlier complaints had been filed alleging violations of applicable regulations governing the provision of COCOT service. The agreements provide the funding necessary to ensure future monitoring of the COCOT industry's compliance with applicable laws and regulations. Hearings were held and briefs filed in the cases of three COCOT operators with whom no settlement was reached. No order has yet been issued by the DPU as to acceptance of the settlement agreement terms, or the individual cases that were litigated.

Yankee Atomic Electric, FERC Docket No. ER92-592-000

In June 1992, the Division intervened in the Yankee Atomic retirement/decommissioning case. After reviewing Yankee's filing, initial discovery responses and discussing the relative merits of proceeding to hearing with fellow intervenors (R.I. AG, Mass. DPU, R.I. DPU and Mass. & Conn. municipals) and FERC Staff, it was decided that Yankee's decision to shutdown the plant, i.e. it was no longer economic to run given the cost to do NRC safety repairs, was likely the correct one, though for the wrong reason, i.e., many hold the opinion that the shutdown was justified on safety reasons alone.

A settlement resulted where Yankee was required to write-off $3M of plant investment but allowed to recover the balance of its outstanding rate base ($46M) and to collect its scaled-down, initial decommissioning estimates. Review of final decommissioning figures were postponed until after the NRC rules on Yankee's decommissioning plan. This office will be given an opportunity for input into Yankee's plan and its cost estimates through a preview of the company's NRC filing, at the NRC hearings and subsequent FERC rate setting proceedings.

The settlement was filed with the ALJ in early December and interim rates have been in effect since January 1, 1993 pending its approval by the Commission. One Massachusetts municipality, the Town of Norwood, after initial assent, is contesting the settlement. Their protest is not expected to hinder FERC approval of the proposed settlement.

Nantucket Electric Company, DPU 92-7B-A

In July 1992, Nantucket filed its annual generating unit performance data for the twelve month performance period April 1991 to March 1992. The Attorney General represented ratepayers in several days of hearings noting the poor performance of the Company's generating units. The Attorney General opposed replacement power cost charges for two of the Company's outages of its base-load units. One outage (Unit 7) was due to an explosion of unknown cause, and the other (Unit 6) had an extended outage due to a failed rotor repair. A decision before the DPU is pending.

New England Telephone, DPU 92-100

The Attorney General intervened at the DPU to oppose New England Telephone's (NET) third request in a continuing series of annual increases in basic residential rates. The DPU granted the rate increase but also approved a Partial Settlement with the Attorney General which requires NET to increase its efforts to notify low-income consumers of low-cost telephone service options and to limit its efforts to sell extra-cost optional services to such consumers. NET must also seek to place additional pay phones in low-income neighborhoods and notify customers in Dorchester, Roxbury and Mattapan about how to obtain satisfaction of their complaints for poor service.

Boston Edison Company, EFSB 90-12/12A

The Attorney General intervened at the Energy Facility Siting Commission, now the Energy Facility Siting Board (EFSB) to question the need for Boston Edison Company (BECo) proposed Edgar generating plant. After more than 50 days of hearings, the Siting Council agreed with the Attorney General that there was no need for the plant until at least 1997 and that any future need for the plant should only be reviewed in the DPU's formal planning process (called Integrated Resource Management). Although the Company withdrew its proposal to build the plant, its proposal to "bank" the site for late use is pending.

Northeast Telesystems Incorporated, DPU 90-137

After conducting an investigation, the Attorney General petitioned the DPU to withdraw the temporary operating certificate of this Company because of its failure to possess the requisite managerial and technical ability to provide its public utility payphone service, including its continuing failure to correct overcharges. The DPU granted the petition.

Western Massachusetts Electric Co., Boston Edison Co., DPU 92-13, DPU 91-233

The Attorney General has been participating in collaboratives that have jointly designed and helped implement and evaluate conservation programs at Western Massachusetts Electric Co. and Boston Edison Co. These collaborative procedures and programs have been at the frontier of conservation implementation in the United States. In these cases, agreements were reached to extend conservation programs for two years at stable budgets and without major rate impacts. In addition, the agreements implement significantly more cost-effective methods for delivering conservation services, thus delivering more conservation and more pollution control for the dollar.

Boston Edison Company, DPU 92-1A

During the first part of 1992, the Attorney General intervened in the review of Boston Edison Company's (BECo's) generating unit's performance for the period from November 1, 1990 through October 31, 1991. The review, undertaken by the DPU, centered on BECo's most important generating units: New Boston 1 and 2; Mystic 4,5,6 and 7; and the Pilgrim Nuclear Plant. During the process, the Attorney General identified a number of instances in which BECo's performance was evidently imprudent and asked the DPU to translate those episodes of substandard performance into fuel credits to BECo's rate-payers. A decision is pending.

INSURANCE

1993 Private Passenger Automobile Insurance

On July 2, 1992, the Massachusetts Commissioner of Insurance determined that Private Passenger Automobile Insurance Rates for 1993 must again be fixed and established in accordance with G.L.c. 175 sec. 113B. The various components of the ensuing process continued until late November. As a statutory intervenor representing the interests of Massachusetts consumers, the Attorney General contested several aspects of the 12.3% rate increase originally requested by the industry. A decision was issued by the Commissioner on December 22, 1992, fixing the 1993 average rate at a level 5.2% higher than the 1992 average rate. This is 58% lower than the increase requested by the industry. The Commissioner's decision is not yet final, however, since the industry has appealed it before the Supreme Judicial Court.

Blue Cross/Blue Shield Non-Group Health Insurance

In April 1992, Blue Cross and Blue Shield of Massachusetts, Inc. (BCBS) filed with the Division of Insurance (DOI) a request for a 39.6 percent composite rate increase from the MMM Health Statement insureds and a 49.4 percent composite rate increase for Group Conversion subscribers in their non-group market. The Attorney General intervened in this case on behalf of the ratepayers. At the public hearing BCBS proposed that the Non-group hearings be delayed for 30 days so that all parties could work together to craft a non-group reform package. The Commissioner of Insurance granted BCBS's request and together with the Attorney General convened a panel of concerned persons to participate in a Non-Group Reform Commission. On June 15, 1992 - parallel to the Reform Commission's examination of market reform issues - the administrative hearings began. Four witnesses for BCBS, two for the Attorney General and two for the State Rating Bureau presented sworn testimony at the hearings. Briefs were submitted by all parties, but no order has yet been issued by the Commissioner.

During the summer of 1992 the Non-Group Commission continued to meet to try to reach come sort of consensus as to how to reform the non-group market. While the Commission came to some consensus as to the problems that have arisen in the non-group market, a consensus was not reached as to the solution.

As a result, the Attorney General presented his own legislation in December, sponsored by the Honorable Carmen Buell, which called for both (1) market reform of the non-group market in Massachusetts, and (2) a tax credit to make a basic health insurance product more affordable to those most in need. While the legislation is still pending, the Attorney General continues to refine the legislation which was submitted, and to search for solutions to the health insurance crises which exist.

Blue Cross and Blue Shield Medigap Health Insurance

The Attorney General participated as an intervenor in Blue Cross and Blue Shield of Massachusetts, Inc. (BCBS) Medi-gap insurance rate increase proceedings before the Division of Insurance. On August 3, 1992, BCBS filed a requested composite rate increase of 18%. The Attorney General retained an outside actuary to challenge various cost projections in the BCBS Filing and submitted a Responsive Filing. After the record was closed, BCBS filed a motion to reopen the record and introduce substantial revisions of its prescription drug program which reduced the requested composite rate increase to 14.7%. The motion was allowed.

To facilitate a timely decision on this rate request, the Hearing Officer established a bifurcated briefing schedule which required the Attorney General to submit an initial brief on actuarial and cost containment issues and a supplemental brief relating to the prescription drug benefit projection. The Attorney General additionally filed a Reply Brief in this proceeding. The Commissioner of Insurance is expected to issue a decision in January 1993 on this rate request.

Medigap Commission

In January 1992, Consumer Affairs Secretary Gloria Larson appointed a special working group to review the Medicare supplemental ("Medigap") insurance market in Massachusetts and make recommendations for needed changes. The formation of the Commission was in response to a 21 percent rate increase granted in January 1992 by the DOI to Blue Cross/Blue Shield for its medigap plans, commonly called Medex. The Attorney General was a member of this Commission which met a number of times to review information about the medigap market and discuss options for reform. A report was issued by the group on November 10, 1992.

City of Cambridge, et al v. Attorney General

In October 1992, the Attorney General obtained a consent judgment in Suffolk Superior Court from Blue Cross and Blue Shield of Massachusetts, Inc. (BCBS), which provides that BCBS will review and pay valid claims for chiropractic and infertility treatment services rendered to City of Cambridge employees insured under BCBS (at the date of signing the Consent judgment, BCBS had already paid $74,377.57 of these claims). BCBS agreed to pay $20,000 to the Massachusetts Caring for Children Foundation for the provision of primary and preventive health care to children of limited means in the City of Cambridge and to pay $20,000 to the Attorney General for the costs of the investigation and litigation.

BCBS also agreed to comply with the mandated health care benefits provisions of M.G.L.c. 176A and 176B, for all health care programs it provides or administers for the City of Cambridge.

This case was initiated by BCBS and seven municipalities seeking a declaration that Proposition 2.5 precluded the application of mandated health benefits laws to cities and towns. The Supreme Judicial Court ruled that Proposition 2.5 had no applicability to Blue Cross and Blue Shield's mandated health benefits laws. The Attorney General asserted that Blue Cross and Blue Shield excluded coverage for chiropractic and infertility treatment and diagnosis on and after July 1, 1988, received by City of Cambridge insured employees, in violation BCBS's enabling act, Massachusetts insurance law, and the Consumer Protection Act.

Market Forge

This company changed its group health insurance from Blue Cross and Blue Shield of Massachusetts, Inc. ("BCBS") to Bay State. BCBS then notified Market Forge that the BCBS Medex program would be cancelled as of the termination of the BCBS group health plan. The BCBS action had the effect of leaving retirees without health insurance for 6 months (when the next Medex open-enrollment period would begin). After the intervention of this Office, BCBS agreed to keep in force the Medex plan as a stand-alone product so that the retirees would have uninterrupted coverage with their existing medical providers.

State Mutual Life Assurance Company of America

This insurer had terminated, thus preventing the renewal, of a small-group health insurance plan in violation of the Small Group Act. The case was of great concern to the Attorney General because one member of the group who was diagnosed with AIDS would have been without coverage, and because of pre-existing condition exclusions, would have been unable to secure other health insurance. After the intervention of the office, the insurer rescinded the termination claiming that it had sent incorrect information to the employees. The Insurer agreed that future renewals will be subject to the Small Group Act.

American Association for Senior Citizens

This case involved the sale to Massachusetts senior citizens of memberships in American Association of Senior Citizens (AASC) an association which offered revocable living trusts, certain health services, and pre-paid legal services as membership benefits. This pre-paid legal service plan (legal insurance) was unauthorized, and thus illegal insurance in Massachusetts. AASC also misrepresented the cost, duration and complexity of probate proceedings. In response to the Attorney General's investigation, AASC ceased doing business in the Commonwealth and agreed to sign an Assurance of Discontinuance, which was filed in Suffolk Superior Court in June 1992. According to the terms of the Assurance, AASC will notify the Attorney General in advance if it intends to resume business in Massachusetts, refund the full amount of membership fees paid by Massachusetts residents (approximately $50,000), and donate $7,500 to the Local Consumer Aid Fund.

American Society of Senior Citizens

In a similar matter, the Attorney General sent a Civil Investigative Demand to the American Society of Senior Citizens (ASSC) which was offering memberships similar to those of AASC and in a similar manner. In responding to the CID, ASSC agreed to stop doing business in Massachusetts.

Commonwealth v. Poitras, et al.

This case began in April of 1990, with the Attorney General filing a Complaint in Suffolk Superior Court against the Massachusetts Lobsterman's Association (MLA) and several other defendants. The Complaint alleged that MLA had marketed and sold an accident and health insurance plan to fishermen and lobstermen in Massachusetts and other coastal states. MLA has more than 1000 members who paid in excess of $6 million in premiums to the Maritime Commerce Foundation Trust Health Plan since 1985.

The Attorney General alleged that the defendants refused to pay legitimate claims in excess of $1 million; repeatedly misrepresented the existence of insurance coverage and claim payments; and induced participants to remain in the plan by falsely informing them that prior claims would be paid by a successor administrator if they would pay an additional $50.00 to the company.

In September of 1992, the defendants' motions for summary judgment were denied.

Cancer Insurance Testimony

In October of 1992, Assistant Attorney General Virginia Hoefling appeared on behalf of the Attorney General before the Commissioner of Insurance during hearings on the ban on Cancer Insurance. The Attorney General's position was presented through both written and oral testimony. The Attorney General urged the Commissioner to retain the ban on cancer insurance because it is of little economic value and tends to be marketed in an abusive manner. The ban on these policies is still in effect.

Boston Committee on Access to Health Care

The Attorney General participates in this Committee which presents a report each year on the level of access to health care in the City of Boston. The Committee also offers recommendations to improve access.

This year's report includes recommendations on the free care pool: the range of services covered by the free care pool should include preventive, primary, ambulatory, and inpatient care; the free care pool should be adequately funded and services should be delivered more cost effectively in the most appropriate setting; and there is a need for increased consumer education about access to care for the uninsured.

The Attorney General stressed the need to support the design of community-institutional partnerships for outreach to the uninsured. Effective projects are those developed through joint needs assessment and are linguistically and culturally sensitive to the community.

HOME IMPROVEMENT MORTGAGE CASES AND SETTLEMENTS

BayBanks

A pre-complaint agreement was reached between BayBanks in February 1992, the Department of the Attorney General and community groups to benefit Massachusetts low-income urban homeowners. The agreement resolves the part of the Attorney General's banking industry investigation that relates to any liability BayBanks may have had in connection with indirect financing of home improvements contracting transactions.

Under the terms of the agreement, BayBanks, beginning no later than April 1, 1992, will provide $5 million in home improvement loans to low income individuals. The loan program will be targeted at particular urban neighborhoods. For the first 3 months of the program, loans will be available at an interest rate 3.5% below the rate for similar loans. After the first three months, loans will be available at 3% below the rate for similar loans.

BayBanks also agreed to contribute $6 million to Massachusetts Housing Investment Corp., Inc. (MHIC) for the construction of affordable housing. MHIC works with community groups and others to develop permanent and rental housing units. If MHIC does not substantially utilize the $6 million within the next two years, BayBanks is required to invest in other programs designed to benefit low income individuals.

The agreement also calls for a greatly strengthened and expanded program for the resolution of consumer complaints under the auspices of the Massachusetts Community and Banking Council (MC/BC). Under the agreement, BayBanks will make the MC/BC process available to more than 11,000 home improvement customers whose home improvements were indirectly financed by BayBanks between November 1987 and February 19, 1992. BayBanks also agreed that home improvement dealers and their sales forces will attend training sessions that BayBanks will offer to minimize the type of consumer fraud that has troubled certain companies in the home improvement industry.

Fleet Bank

The Attorney General accepted an Assurance of Discontinuance from Fleet National Bank under the authority granted to the Attorney General by G.L. c. 93A, §5, on April 9, 1992 in lieu of proceeding against Fleet. Under the Assurance, Fleet was required to create a $12 million mortgage loan program for low-income neighborhoods. The loans under this program feature no downpayment, no closing costs, and an interest rate one percent below Fleet's best regular rate. Fleet is also obligated to provide restitution to 40 persons who borrowed from Resource Lending, consisting of a choice of a new loan on very favorable terms or a $6,000 cash payment. Fleet is also obligated to obtain legal opinions regarding whether the second mortgage companies they fund in the future are lending on terms that violate consumer protection laws.

Shawmut

The Attorney General accepted an Assurance of Discontinuance from Shawmut Bank, N.A. pursuant to G.L. c. 93A, § 5 in February 1992. Under the Assurance, Shawmut is to provide one of two types of relief to the approximately 50 Resource borrowers whose loans were indirectly funded by Shawmut: (1) A new first mortgage to be used to consolidate and reduce existing debt, or to recover a home lost due to foreclosure by Resource Services (the new mortgage will have no fees, no points, and will be offered at a below market rate), or (2) the borrower can accept a cash payment in the amount of 12% of the original loan with Resource Services.

Shawmut is also required to create a $5 million mortgage loan program and a $2 million home improvement loan program for low income consumers. Under the $5 million loan program no downpayment is required, there are no closing costs, and the interest rate is one percent below Shawmut's best regular rate. Under the home improvement loan program, loans are to be offered at three percentage points below Shawmut's regular rate.

Quincy Savings Bank

The Attorney General accepted an Assurance of Discontinuance from Quincy Savings Bank in Juine 1992 stemming from transactions by Lincoln Trust Co. prior to its acquisition by Quincy Savings. Under the terms of the Assurance, 100 Resource borrowers will receive either a new loan on favorable terms or $1250 in cash. Quincy Savings was also required to establish a $3 million mortgage loan program for low-income individuals. Under this program the loans have no down payment, no closing costs, and an interest rate one percent below Quincy Savings' best regular rate. Quincy Savings also agreed to continue not to fund any second mortgage companies for three years, unless authorized by the Attorney General.

South Shore Bank

The Attorney General accepted an Assurance of Discontinuance in June 1992 from South Shore Bank resolving claims regarding South Shore's role in funding Resource Financial. Under the terms of the Assurance, South Shore is required to provide relief to 367 Resource borrowers. The 278 consumers who have already paid off their Resource loans will receive a flat cash payment of $2,350. An additional 68 consumers whose loans are outstanding will receive their choice of a cash payment or refinancing of their loans on very favorable terms. The 21 Resource borrowers whose properties are currently held by Resource will receive either the cash or a loan to re-acquire their homes. The favorable terms of the loans to be made by South Shore include no downpayment, no closing costs, and an interest rate one percent below South Shore's best regular rate. South Shore is also obligated to donate $150,000 to establish a Legal Assistance Program for consumers facing foreclosure by lenders other than Resource.

USTrust

A pre-complaint agreement was reached between USTrust and the Attorney General in July 1992 resolving the Attorney General's investigation regarding any liability USTrust may have had in connection with the indirect financing of home improvement transactions. Under the terms of the agreement, US Trust will provide $3 million in mortgage loans targeted to low income communities. The loans have terms very favorable to consumers including no downpayment, no closing costs, and an interest rate one percent below USTrust's best regular mortgage rate.

The agreement also requires USTrust to make $2 million in loans to small minority business enterprises at below market rates. USTrust is further required to institute a Consumer Complaint Resolution Program to resolve consumer complaints regarding home improvement loans funded by USTrust. Approximately 400 consumers who received home improvement financing through USTrust are eligible for the arbitration program.

Commonwealth v. Labonte

This action alleges that the defendants engaged in unfair and deceptive acts and practices in the business of providing loans. It alleges that the defendants fraudulently induced homeowners to transfer title to their homes under the guise of obtaining a mortgage. This case involves over fifty consumers and is very fact and time intensive.

In an effort to move this along we have set January 15, 1993 for the filing of our Summary Judgment Motion. The threat of this motion has once again scared up settlement discussions. Nevertheless, the likelihood is we will file and if necessary get a trial date for late spring.

Cases filed:

Commonwealth v. Carefree Building Products

On May 4, 1992 the Attorney General filed this suit in Suffolk Superior Court against a home improvement company for committing unfair and deceptive practices in the sale and financing of home improvements. The complaint alleges that the defendants misled consumers regarding the price they would have to pay for home improvements, misrepresented to consumers that home improvement loans with burdensome financial terms would be refinanced at lower rates, and prepared and submitted falsified income verification documents to lenders.

Commonwealth v. James Pentland and Earl Pentland

The Attorney General filed this complaint in Suffolk Superior Court on May 4, 1992 against two home improvement contractors for committing unfair and deceptive practices in the sale and financing of home improvement services.

James Pentland entered into a Final Judgment by Consent on April 30, 1992 which was approved and ordered by Justice Abrams on October 15, 1992. Under the terms of the Final Judgment, James Pentland agreed to pay a total of $23,000 in restitution to two consumers and $2,000 in civil penalties to the Commonwealth. Pentland is also permanently enjoined from engaging in unfair and deceptive practices in sale and financing of home improvement services.

Commonwealth v. Better Home Concepts and Commonwealth v. Rolling Shutters of New England

On June 2, 1992, the Attorney General filed suit against three North Shore men doing business as Better Home Concepts, Inc. Better Home Concepts allegedly may have victimized more than 40 homeowners, by engaging in a scheme to solicit money from homeowners by offering home improvement services that they never intended to perform. The defendants allegedly deceived consumers by making false representations and grossly underbidding home renovation jobs to induce homeowners to enter into work contracts with financing arranged through Better Home Concepts.

They also allegedly substituted inferior quality materials for the ones shown, obtained loans in consumers' names without their knowledge, installed fixtures and supplies that they failed to pay for, and, in the final days of the business' operation, continued to solicit contracts from customers when virtually all of their workers had resigned after not being paid.

On the same day, the Attorney General also filed suit against Rolling Shutters of New England, and two of the individuals also named in the Better Homes complaint. In the Rolling Shutters case, the office alleges that the defendants took advantage of a couple with mental disabilities living in Gardner, Massachusetts by allegedly engaging in unfair and deceptive practices in connection with the arranging for home improvements. The complaint alleges that the defendants arranged to sell the couple security shutters and vinyl replacement windows in two separate transactions for a total price of approximately $20,000. The two transactions were secured by mortgages requiring monthly payments in excess of 33% of the couple's disability payments.

Resource

The Attorney General filed a complaint against Resource Financial Group, Inc. and several of its related companies on October 4, 1991. The complaint alleged that Resource is a self described "asset recovery company" that aggressively used home foreclosure procedures. Additionally, the complaint alleged that Resource charged consumers interest for "security deposit" escrow funds that the consumers did not effectively borrow. Resource also allegedly misrepresented to consumers that high interest loans would be refinanced at low rates and that security funds could be drawn upon without penalty if the consumer missed a payment.

The Resource companies were funded through lines of credit with four of the banks that entered into settlement agreements with the Attorney General in order to resolve the investigation into possible liability by the banks. The suit sought restitution for consumers, civil penalties and injunctive relief.

Soon after the suit was filed, the Resource companies filed for bankruptcy. Negotiations have been ongoing with the principals of the Resource companies.

Seacoast Home Builders, Money Tree and Rhodes Financial Services

In addition, after filing complaints against Seacoast Home Builders, Money Tree and Rhodes Financial Services in 1991, during 1992 we proceeded to prosecute these cases and seek restitution for consumers who are injured as a result of the unfair and deceptive acts and practices of these companies.

CIVIL INVESTIGATION DIVISION

The Civil Investigation Division investigates all non-criminal matters within the office, both affirmative and defensive, for all divisions within the Public Protection and Government Bureaus.

The major duties of Division investigators are: locating and interviewing victims, witnesses, subjects and others; obtaining and reviewing documentary evidence from numerous sources including individuals, corporations, and Federal, state, county and municipal agencies; conducting surveillance, background checks and asset checks; analyzing financial records and performing other forensic accounting tasks; serving process such as complaints, injunctions and other court orders; and representing the office at Industrial Accident Board conciliations in Boston, Lawrence, Fall River, Worcester and Springfield.

In 1992, the Division conducted over two hundred investigations in the following major subject areas:

Civil Rights

The Division investigated "hate crimes," allegations of police misconduct and other violations of the Massachusetts Civil Rights Act by interviewing alleged victims, witnesses and, where appropriate, subjects of such investigations. In cases of alleged police misconduct, investigators obtained and reviewed police reports, court documents and other available evidence.

Public Charities

The Division investigated individuals and/or organizations who raised funds from the public, allegedly in violation of Massachusetts laws. Investigators interviewed victims, usually business people, who made donations to a charity based on the misrepresentation of a solicitor. On several occasions, CID worked with local police departments in locating "couriers" who picked up donations.

Consumer Protection

Investigators continued to perform their traditional role by assisting the office in bringing M.G.L. c. 93A enforcement actions against businesses and individuals in major consumer areas such as automobiles, health spas, travel, mobile home parks, retail sales, hearing aids, advance fee loan scams and insurance/investment scams affecting the elderly. CID continued to play a major role in the office's HIMS investigation of banks, mortgage companies, brokers and home improvement contractors.

Environmental Protection

The Division's role in EPD cases primarily involved locating and identifying assets of potentially responsible parties liable for paying costs incurred by DEP in the clean up of polluted or hazardous waste sites. Investigators located former employees and officers of defunct companies responsible in part for such violations.

Torts

The Division investigated the deaths of clients in state care, alleged wrongful termination of state employees, and personal injuries and other damages which occurred on state-owned property and/or in accidents on state roads or involving state cars, in order to obtain accurate information relevant to tort actions filed against the Commonwealth.

GOVERNMENT BUREAU

Fiscal Year 1992 was the first year of the newly-reorganized Government Bureau, consisting of the Administrative Law Division (the former Government Bureau) and the Trial Division (the former Civil Bureau). By operating as two divisions of a single bureau, under common leadership, the two former bureaus have come to recognize the substantial areas of overlap in their work, have institutionalized the sharing of available expertise and resources in these areas, and have made significant progress toward developing common standards and approaches.

The newly structured Government Bureau is headed by a Bureau Chief and a Chief of Litigation and Training, with each division headed by a Division Chief. During Fiscal Year 1992, the Bureau conducted a series of training programs focussing on matters of relevance to the work of both divisions. In addition, supervisory structures were established in the Trial Division to mirror those already in place in the Administrative Law Division, and to draw on the expertise available throughout the Bureau. Teams drawn from both divisions were assigned to handle particular cases; these assignments served to broaden the skills and experience of the individuals involved as well as to assemble the combination of skills and expertise best suited to the particular cases. As of the end of the fiscal year, one attorney was assigned permanently to devote part time to each of the two divisions of the Government Bureau, and plans were pending for other such assignments.

Consolidation of the two former bureaus has also provided opportunities for increased coordination of affirmative litigation. A single Coordinator of Affirmative Litigation for the entire Bureau has been appointed; the Coordinator receives referrals from client agencies and others, conducts the initial development of potential cases, and then refers them to one or both division chiefs for assignment within a division or to a team drawn from both divisions. This system has served to integrate affirmative work into the Bureau's regular caseload, as well as to broaden the Bureau's involvement in affirmative work, particularly in the areas in which substantive expertise is available in the Trial Division.

The Bureau has continued its efforts to develop and maintain close working relationships with agency counsel. Meetings with all agency general counsel were held in September of 1991 and March of 1992; these meetings provided opportunities for reporting on significant events in the Commonwealth's litigation, as well as for general discussion of issues of mutual concern. In addition, early in 1992 the Bureau adopted the practice of distributing to agency counsel the bi-monthly Government Bureau Report to the Attorney General, which summarizes significant events in cases, case dispositions, and important new litigation. As of the end of Fiscal Year 1992, plans were in progress for the publication of an Agency Counsel Newsletter, and for a training session for agency counsel in handling administrative review cases.

THE ADMINISTRATIVE LAW DIVISION

The Administrative Law Division has maintained the structure it had as the former Government Bureau, without internal sub-divisions. Cases are assigned within the division based on experience and expertise, but division attorneys do not generally specialize in particular subject areas. To assist the Trial Division during a time of particularly acute resource scarcity, as well as to bring the allocation of case responsibilities more into conformity with the distribution of institutional experience and expertise, the Administrative Law Division in fiscal year 1992 took over from the Trial Division responsibility for cases seeking judicial review of adjudicatory decisions of the Contributory Retirement Appeals Board. During the same period, the Division developed an increasingly systematic process for handling these and other administrative review cases involving non-state co-defendants in such a way as to require co-defendants to represent their own interests, and to avoid duplication of their activities. Through this approach, the Division has succeeded in conserving its resources for use in cases of greatest significance to the interests of the Commonwealth. During fiscal year 1992, the Division opened 599 cases and closed 98 cases. These numbers reflect a substantial increase in the Division's caseload over the previous year.

The Administrative Law Division has four functions:

1. Defense of lawsuits against state officials and agencies concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief.
2. Initiation of affirmative litigation on behalf of state agencies and the Commonwealth, particularly claims for such relief.
3. Legal review of all newly-enacted municipal by-laws.
4. Preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties. During fiscal year 1992, significant events occurred in each of these areas.

1. Defensive Litigation

Cases defended by Division attorneys resulted in one reported decision of the United States Supreme Court, thirty-seven reported decisions of the Supreme Judicial Court, eleven reported decisions of the Massachusetts Appeals Court, three reported decisions of the United States Court of Appeals for the First Circuit, and twelve reported decisions of the United States District Court. As well, division attorneys were involved in many cases in these courts which resulted in unpublished decisions.

In Rufo v. Inmates of Suffolk County Jail, the Supreme Court set forth standards for the modification of consent decrees governing public institutions. The Court adopted a flexible standard for modification of these decrees, as proposed by the Commonwealth.

Consent decrees regarding public institutions continued to consume considerable time for Division attorneys. The Division unsuccessfully sought to reduce court oversight of Department of Mental Retardation facilities in Massachusetts Association of Retarded Citizens v. King and related cases. As of the end of the fiscal year, this decision was on appeal to the First Circuit. The U.S. District Court ended its oversight of mental health services in Western Massachusetts in Brewster v. Dukakis. During this fiscal year, the Division moved to terminate the consent decree governing Worcester State Hospital in United States v. Massachusetts. The federal Health Care Finance Administration and the United States District Court's independent monitor evaluated the hospital favorably during the year, and the court should shortly rule on the motion.

During this year, the Department of Justice advised the Commonwealth that it would not file litigation regarding Westborough State Hospital, finding that it presented no significant violations of federal law. Also during this fiscal year, the United States District Court reopened the cases regarding the Bridgewater Treatment Center to determine whether certain proposed changes at the facilities violate the consent decrees entered in the 1970s.

The Division also spent significant time and resources in fiscal 1992 defending changes in a variety of state income maintenance and other benefit programs, many of which involved budget cuts.

In Barnes v. Weld, the SJC affirmed the Governor's authority to use his line item veto power to cut the appropriation for the Emergency Assistance program. In MacInnes v. Department of Public Welfare, the SJC upheld a regulation requiring that all children in a family receiving Aid to Families with Dependent Children be included in the assistance unit for purposes of determining the grant amount.

In Salem Hospital v. Commissioner of Public Welfare, the SJC affirmed regulations disqualifying non-resident aliens from eligibility for Medicaid. In Berrios v. Gallant, the SJC affirmed emergency regulations regarding the Emergency Assistance welfare program, promulgated as required by legislation.

In Woods v. EOCD, the SJC held that the Executive Office of Communities and Development had improperly implemented legislation requiring cuts in its housing voucher program.

In Flint v. Commissioner of Public Welfare, the SJC declined to rule on a challenge to certain Medicaid regulations, finding the controversy moot.

In Rawston v. Department of Public Welfare, the SJC affirmed decisions regarding AFDC living arrangements.

In significant litigation involving challenges to statutes and rules, the Division represented the Supreme Judicial Court in Washington Legal Foundation v. Massachusetts Bar Foundation, in which the U.S. District Court dismissed a challenge to a judicial rule requiring interest on lawyers' trust accounts to be used for indigent legal services and programs to improve administration of justice.

In Powers v. Secretary of Administration, the SJC upheld the constitutionality of the statute placing the City of Chelsea into receivership.

In Rushworth v. Gnazzo, the SJC upheld the statute requiring forfeiture of driver's licenses of persons convicted of certain drug crimes.

In Davrod v. Coates, the First Circuit upheld restrictions on shellfishing against a Commerce Clause challenge.

The Division also defended multiple attacks on the Central Artery/Third Tunnel project in state and federal courts.

In Sierra Club v. Larson, the Division successfully opposed a motion to enjoin the project pending review of the plaintiff's challenge to the tunnel ventilation systems. The remaining cases reached a state of repose as a result of settlements between the project proponents and the plaintiffs.

The Division represented the Commonwealth in several cases involving health care financing. In Rate Setting Commission v. Faulkner Hospital, the SJC affirmed several decisions of the Rate Setting Commission, saving the Commonwealth approximately $5 million in Medicaid payments.

In Franciscan Children's Hospital v. Rate Setting Commission, the SJC rejected the Rate Setting Commission's interpretation of the governing statute, requiring an increase in payments to chronic care hospitals.

In Massachusetts Hospital Association v. Department of Medical Security, the SJC found that the agency lacked power to set a ceiling on the amount of bad debt it would reimburse. The Division also negotiated settlement in Massachusetts Hospital Association v. Department of Public Welfare, which challenged the method for calculating the federally-mandated upper limit on Medicaid expenditures for acute care hospitals.

In Heritage Hill v. Rate Setting Commission, the Appeals Court upheld denial of a claim for attorneys' fees in an administrative proceeding regarding reimbursement rates.

In another provider reimbursement case defended by the Division, Behavior Research Institute v. Secretary of Administration and Finance, the SJC rejected a special education school's claim for higher rates.

The Division represented the Commonwealth in a variety of cases involving state employment policies and practices. In Equal Employment Opportunities Commission v. Commonwealth, the United States District Court upheld the statute requiring state employees older than age 70 to take an annual medical examination to establish their fitness for work. In another case of the same name, the U.S. District Court invalidated the statute barring state employees older than age 70 from continuing to accrue creditable service for pension purposes.

In Madden v. Secretary of Public Safety, the SJC determined that the applicable statute required that a state police officer convicted of a crime be given back pay for a period after his first indictment, which was nol prossed, and before his second indictment, which resulted in conviction.

In McCarthy v. Civil Service Commission, the Appeals Court upheld the Civil Service Commission's decision that certain employees transferred from the Boston Department of Public Works to the Boston Water and Sewer Commission retained only limited civil service rights.

In Correction Officers Local 419 v. Sheriff, in which the Division filed an amicus brief, the SJC upheld the legality of a statute removing employees of the Suffolk County House of Correction from provisions of the civil service law.

In Caron v. Silvia, the Appeals Court determined that a discharged state employee was entitled to a trial on her claim that she was fired because she spoke out about her right to smoke in the workplace.

The Division participated in several cases involving state intervention in the family. In A.R. v. C.R., the SJC adopted the legal framework suggested by the Division to analyze a claim that a husband could challenge his paternity of children born during his marriage.

In Department of Revenue v. G.W.A., the SJC set forth a framework for reviewing a trial court's departure from the guidelines established for setting child support, determining that the trial court's deviation in this case was appropriate.

In Department of Revenue v. B.P., the SJC decided that a putative father's refusal to submit to a blood test is admissible in a civil paternity action, and that an adverse inference may be drawn from such a refusal.

In Department of Revenue v. W.Z., the SJC rejected a claim for refund of child support paid by a man who, years after being adjudged the father of a child out of wedlock, obtained blood test evidence that he was not the biological father.

In Department of Revenue v. Robar, the Appeals Court upheld a judgment of paternity against a man who sought vacation of judgment because he did not have counsel.

Also, the Division represented the Department of Social Services in Care and Protection of Beth, in which the SJC affirmed the trial court's order that a 4-year-old girl in DSS's custody, who is in a persistent vegetative state, should not be resuscitated by intrusive means if she has cardiac or respiratory arrest. In D.L. v. Matava, the SJC upheld Department of Social Services regulations allowing DSS to place children in its custody in inpatient mental health treatment.

In Guardianship of Roe, the SJC affirmed the trial court's judgment that an individual was incompetent to evaluate the risks and benefits of receiving antipsychotic medication because he did not admit his illness.

The Division represented agencies of the Commonwealth in a variety of matters challenging regulatory decisions. These agencies included the Division of Insurance in Aetna v. Commissioner of Insurance (company agrees to follow rules regarding withdrawal from market), Scott v. Monarch Life Insurance Company (receivership), Telles v. Commissioner of Insurance (SJC invalidates regulations prohibiting discrimination in premiums or benefits on the basis of gender) and Reliance Insurance Company v. Commissioner of Insurance (Appeals Court affirms dismissal of challenge to rules governing withdrawal from market). The Department of Public Utilities in Bertone v. Department of Public Utilities (SJC affirms decision to allow additional taxi medallions) and Monsanto v. Department of Public Utilities (SJC affirms decision regarding conservation and load management against antitrust challenge). The Department of Revenue in Commissioner of Revenue v. New England Power Company (SJC rejects Commissioner's position regarding construction work in progress for corporate excise tax apportionment).

The Energy Facilities Siting Council in Massachusetts Municipal Wholesale Electric Company v. Energy Facilities Siting Council (SJC invalidated regulations requiring filing of certain data as not authorized by enabling statute).

The Division also handled the following cases involving review of licensing or permitting decisions:

Board of Appeals of Rockport v. DeCarolis (Appeals Court remanded for declaratory judgment regarding conflicting orders of local board of appeal and State Building Code Appeals Board); Oznemoc v. Alcoholic Beverages Control Commission (SJC affirmed license suspension over Fifth Amendment challenge); Selectmen of Saugus v. Alcoholic Beverages Control Commission (Appeals Court upheld agency decision allowing licensee additional time to transfer license); DeMello v. Alcoholic Beverages Control Commission (SJC upheld license revocation); Varga v. Board of Registration of Chiropractors (SJC affirmed suspension of chiropractor's license against challenge to composition of board); and Benmosche v. Board of Registration in Medicine (SJC affirmed revocation of medical license).

Other decisions of importance included Bannister v. Commonwealth, in which the SJC reaffirmed the "essentiality" requirement for issue preclusion; Onofrio v. Department of Mental Health, in which the SJC ruled that sovereign immunity bars the award of post-judgment interest against the Commonwealth in claims under the Tort Claims Act; American Bald Eagle v. Bhatti, in which the United States District Court denied a preliminary injunction against a deer hunt on Metropolitan District Commission land; and Gertel v. Brookline, in which the United States District Court ruled that 30-day statute of limitations applies to special education claims in federal court.

2. Affirmative Litigation.

In affirmative cases, the Division obtained one decision of the United States Supreme Court, and initiated another case in the original jurisdiction of the Supreme Court. In Franklin v. United States the Court rejected the Commonwealth's claim that the federal government had violated applicable constitutional and statutory provisions in reducing Massachusetts's allotment in the U.S. House of Representatives to ten seats. In doing so, the court reversed the decision of a three-judge district court panel which had found that the apportionment decision violated the administrative procedure act in its allocation of foreign residents to particular states.

In Connecticut v. New Hampshire, the Division represents the Commonwealth, in cooperation with Connecticut and Rhode Island, in challenging New Hampshire's taxation of electricity generated in the state on the ground that it discriminates against interstate commerce. As of the end of the fiscal year, the Supreme Court had accepted jurisdiction of the case and referred it to a Special Master.

The Division obtained decisions in two cases challenging federal agency rulings regarding reimbursement in combined federal-state funded benefit programs. In Commonwealth v. Madigan the First Circuit rejected the Commonwealth's claim for additional reimbursement for the food stamp program, while accepting the Division's principal legal arguments regarding construction of the applicable statute.

In Commonwealth v. United States, the United States District Court rejected the Commonwealth's challenge to the imposition of reimbursement reductions based on excessive rates of error in eligibility determinations; an appeal is pending.

The Division obtained a favorable Superior Court decision in a major affirmative case tried in the previous fiscal year, Planned Parenthood League v. Operation Rescue. The office had joined with the private plaintiff in that case to seek a permanent injunction, enforceable through criminal contempt proceedings, against obstructing access to abortion facilities.

The Court found that Operation Rescue and the individual defendants had violated the Massachusetts Civil Rights Act, and entered the requested injunction; an appeal is pending.

Administrative Law Division attorneys, in cooperation with the Civil Rights Division and with the various human service agencies, continued efforts to facilitate the siting of group homes for the disabled. As in previous years, these efforts included negotiation with several municipalities regarding the application of zoning and related local regulatory requirements. Each of these matters raised during the fiscal year was resolved successfully without litigation.

The Division also negotiated an agreement under which the former owner of Suffolk Downs racetrack was required to repay funds owed the Racing Commission in uncollected winnings. The Division obtained agreement by the Taunton Housing Authority to obtain health insurance through the Group Insurance Commission, as required by law, and to terminate its relationship with a private insurer.

Division attorneys submitted briefs amicus curiae in six cases during the fiscal year, in courts at all levels: Associated Builders and Contractors v. MWRA (United States Supreme Court, involving issue of federal preemption of state labor policy in public construction contract); Montana v. Mosbacher (United States Supreme Court, reviewing reapportionment resulting from 1990 Census); Bosse v. Bosse (SJC, regarding manner of service of abuse prevention orders); Opinion of the Justices (SJC, regarding constitutionality of proposed legislation to admit in evidence refusal to submit to breathalyzer test); Opinion of the Justices (SJC, regarding constitutionality of proposed legislation limiting terms of elected officials); Boston Kenmore Realty Corp. v. Boston Rent Equity Board (Boston Housing Court, regarding constitutionality of city ordinance regulating conversion of single room occupancy housing).

3. By-Laws.

Town by-laws, home rule charters, and amendments thereto are reviewed and must receive the approval of the Attorney General prior to becoming effective. The review function is performed by attorneys in the Municipal Law Unit within the Administrative Law Division of the Government Bureau. During the fiscal year ending June 30, 1992, the Municipal Law Unit reviewed 1,940 by-laws and 14 home rule actions from over 300 towns. There were 89 disapprovals or disapprovals in part making an error rate of 4.6 percent for the submittals involved.

The by-laws received this year consisted of 907 general by-laws and 1,033 zoning by-laws. General by-laws pertain to town government and the exercise of municipal power. Zoning by-laws are a continuing exercise of local police power over the use of land. Zoning by-laws often generate the most local controversy since they affect what the landowner considers as his basic constitutional right, i.e., to own, use and enjoy his property.

This year saw continuing attempts by municipalities to address pressing environmental concerns, including the enactment of groundwater protection overlay zoning districts, sewage disposal restrictions, and strict stand alone local wetlands protection by-laws.

4. Opinions

The Attorney General is authorized by G.L. c. 1, §§ 3, 6, and 9 to render formal opinions and legal advice to constitutional officers, agencies and departments, district attorneys, and branches and committees of the Legislature. Formal, published opinions are given primarily to the heads of state agencies and departments. Less formal legal advice and consultation is also available. Guidelines to the formal opinions process are available from the Opinions Coordinator, as is information about the informal consultation process.

The questions considered in legal opinions must have an immediate, concrete relation to the official duties of the state agency or officer requesting the opinion. Hypothetical or abstract questions, or questions which ask generally about the meaning of a particular statute, lacking a factual underpinning, are not answered.

Formal opinions are not offered on questions raising legal issues that are the subject of litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation.

Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the Attorney General, the secretary then requests the opinion.

Between July 1, 1991 and June 30, 1992, one formal Opinion of the Attorney General was issued. An additional 77 written requests were considered and either resolved informally or declined.

The formal Opinion appears at the end of this annual report.

THE TRIAL DIVISION

During Fiscal Year 1992, the Trial Division maintained separate contracts, torts, and real estate units, reflecting the former divisions devoted to these areas of specialization.

The former Industrial Accidents Division was gradually phased out, as the office transferred responsibility for representation of state employers before the Industrial Accidents Board to the agencies themselves and to a newly created Workers Compensation Litigation Unit in the Executive Office of Administration and Finance.

Attorneys formerly assigned to the Industrial Accidents Division were reassigned throughout the Government Bureau, and have contributed to the Bureau's ability to respond to its increasing demands despite limited resources.

1. Contracts Unit.

The contracts unit handles litigation involving contract and contract-related disputes. The largest category of contract cases involve construction contract disputes, including bid protests, in which bidders for a subcontract or general contract dispute the results of the competitive bid prior to the award of the contract, and claims for cost increases, in which contractors seek additional compensation due to delays, unexpected site conditions, and the like.

The contracts unit also handles matters referred from the Department of Labor and Industries for enforcement of its orders regarding architect selection and bid protests, as well as matters referred for litigation from the Inspector General involving alleged waste, fraud and abuse.

The contracts unit vigorously defended a series of bid protests during FY 1992; in each case, Assistant Attorneys General succeeded in forestalling all claims for injunctions against construction projects. For example, in Charles Anthony Construction Co. v. Peabody Construction Co., the Superior Court rejected efforts to prevent the Massachusetts Highway Department from making progress payments for the construction of a replacement building for the Armed Forces YMCA in Charlestown Square. Similarly, in Waterbury v. DPW, a single justice of the Appeals Court vacated an injunction that would have prevented a Highway Department bridge replacement project on Route 28A in Falmouth; the Appeals Court ruled that MHD is specifically exempted from MEPA requirements on such projects. Finally, in Davison v. MDC, the Superior Court upheld the MDC's specifications for the qualifications required of sub-bidders on an ice rink project.

Significant cases involving claims for cost increases in FY 1992 included Bonacorso Construction Company v. MDC, in which the Appeals Court rejected a contractor's attempt to prove inflated damages by using a total cost theory; West End Iron Works v. Cardi Corp., in which the Superior Court rejected a subcontractor's delay claim for $348,000 in extra costs; Eastern Contractors v. DCPO, in which Division attorneys settled a claim arising from the construction of the Hogan Regional Center for $450,000 less than claimed; Cardi Corporation v. Commonwealth, in which the Court rejected the plaintiff's claim for $65,000 in damages arising from a road construction project in Mansfield; J.F. White Contracting v. DCPO, in which the Court upheld DCPO's method of calculating the amount of compensation owed for construction at the Franklin Park Zoo in Boston; and Modern Continental Construction Co. v. Commonwealth, in which Division attorneys settled disputes arising out of the reconstruction of the General Lawrence Bridge in Medford for $450,000 less than claimed.

The contracts unit has attempted to employ alternative dispute resolution procedures in construction cases whenever possible.

For example, in J.P. Construction v. DCPO, involving construction claims arising from mortar repointing work at the Fernald School, mediation led to a settlement in an amount less than 25% of that claimed.

Sixty-three (63) new contracts actions were commenced during the fiscal year and forty-four (44) files were closed. In the forty-four (44) cases that were closed, the Commonwealth realized a savings of approximately three million, five hundred thousand dollars ($3,500,000), based on amounts paid as compared to amounts claimed. As of June 30, 1992, there were approximately one hundred fifty (150) contract cases pending, representing a total dollar exposure to the Commonwealth of approximately fifty million dollars ($50,000,000).

In addition to litigation, the contracts unit advises state agencies and officials with regard to contract matters. Issues raised involve formation of contracts, performance, bidding procedures, bid protests, contract contents, contract interpretation and other miscellaneous matters. The most frequent requests received during the fiscal year concerned indemnification clauses in contracts, procedural matters in employment contracts and advice in advance of anticipated construction contract litigation. Requests for advice and assistance come from the Massachusetts Highway Department, Metropolitan District Commission, Secretary of Transportation, Board of Regents of Higher Education, Department of Mental Health, Department of Mental Retardation, Department of Environmental Management, State Lottery Commission, Department of Public Welfare and Division of Capital Planning and Operations.

The contracts unit also reviews contracts, leases and bonds submitted by state agencies for approval as to form. During the fiscal year, the unit received a total of 383 contracts for review. Approximately 40 were rejected and later approved after consultation with the agency involved to attend to matters of contract form. The contracts unit and the Comptroller's Office continued to meet to coordinate and establish a uniform contract form for all 03 service contracts with the Commonwealth. Agency use of these new forms has resulted in substantially fewer rejections.

2. Real Estate Unit.

Trial Division attorneys in the real estate unit handle matters involving real property interests of the Commonwealth. The vast majority of cases litigated involve the defense of petitions for the assessment of damages resulting from land acquisitions by eminent domain pursuant to G.L. c.79. The Commonwealth's agencies acquire land for a variety of purposes, including roads, colleges, recreation and parks, landfills, agricultural and conservation restrictions and easements. Agencies involved in real estate matters include Massachusetts Highway Department, the Metropolitan District Commission, the Department of Environmental Management, the Department of Environmental Protection, the Department of Food and Agriculture, the Department of Fisheries, Wildlife, and Environmental Law Enforcement, and the Division of Capital Planning and Operations.

Significant eminent domain cases resolved during the fiscal year included:

Trapp v. Commonwealth, arising from DEM's 1987 taking of 22 acres in Falmouth for an estuarine sanctuary program, which was settled for $1.9 million less than claimed.

Bedoian v. Commonwealth, arising from MHD's 1983 partial taking of property for the rebuilding of Rte 146 in Sutton, Uxbridge and Douglas, which was settled for $362,000 less than claimed; Brewster Dunes II Cooperative Recreational Housing Inc. v. Commonwealth, a land damage action arising from DEM's 1986 beachfront taking in Brewster, which was settled for $575,000 less than claimed; Striar v. Commonwealth, arising from DCPO's 1989 taking of more than 770 acres of land in New Braintree for a new prison, which was resolved by a jury verdict in the amount $6.1 million ($2.5 million more than the pro tanto payment approved by the Executive Council, and $5.2-$6 million less than the plaintiff's claims).

Cashman v. Commonwealth, arising from the MDC's 1987 taking of land on the Weymouth Bank River, which was settled based on the claimant's assumption of responsibility for environmental cleanup.

Alto v. Commonwealth, involving MHD's March, 1986, taking of a two-family home in Medford for highway improvements, which was settled for $170,000 less than claimed.

Nelson v. Commonwealth, involving fee and temporary takings by the MHD for the widening of Route 20 in Marlboro, which was resolved by a jury verdict for $135,000 ($47,000 more than the Commonwealth's appraisal, but between $282,000 and $365,000 less than the plaintiff's claims).

Miczek v. Commonwealth, in which the Appeals Court ruled that the severance damages sought for the diversion of traffic volume as a result of a temporary partial taking for the construction of Rt. 9 improvements in Leicester were not compensable.

Miseph v. Commonwealth, involving the partial taking of land in Colrain, which was settled for $146,000 less than claimed.

Kastrinakis v. Commonwealth, arising from MHD's taking of land in Salem for the Salem/Beverly Bridge relocation project, which was resolved by a jury verdict of $600,000 ($135,000 more than the Commonwealth's appraisal, but $275,000 less than the plaintiff's claims).

Concord Elks Club v. Commonwealth, involving the taking of land in Concord for the Rt. 2 safety improvement project, which was settled for $245,000 less than claimed.

Miller v. Commonwealth, involving the DPW's 1981 taking of industrially zoned land adjoining Rt. 93 in Wilmington, which was resolved by a verdict of $200,000, 25% of the amount claimed; and Allen v. Commonwealth, involving the improvement of the Braintree Five Corners interchange, in which the jury awarded damages of $7,000, 18% of the amount claimed.

Eminent domain cases handled in the Western Massachusetts office included:

Moccia v. Commonwealth, involving land in Agawam, taken for an improvement of Route 57, which was settled in an amount $40,000 less than claimed.

F.L. Roberts & Company v. Commonwealth, involving land taken for improvements to the intersection of Routes 5 and 10 in Northampton, which was settled for $68,000 less than claimed.

During the 1992 fiscal year, the Division disposed of thirty-four land damage cases, nine by jury trial and twenty-five by settlement. The disposition of these cases resulted in a savings to the Commonwealth of approximately $5,200,000, based on amounts paid compared to amounts claimed. Fifty-four new land damage cases were opened in the real estate unit; a substantial number of these new cases arise from takings related to the Central Artery/Third Harbor Tunnel Project.

The real estate unit also handled other types of real estate related cases. For example, real estate unit attorneys intervened in Shawmut Bank v. Bresnahan, to defend the constitutionality of the Massachusetts prejudgment real estate attachment statute. After the Superior Court declared the ex parte procedures constitutional, the plaintiff in Sarcucci v. Multibank Service Court agreed to dismiss similar claims it had raised in federal court.

In Brimmer Chambers Condominium Trusts v. MDC, approximately 60 property owners on Beacon Hill alleged that the MDC caused their buildings to subside by improperly lowering groundwater and exposing the buildings' wood pile supports to rot. After mediation, the Trial Division settled the case for substantially less than the amount claimed.

Real estate unit attorneys also have the responsibility of protecting the Commonwealth's interests in all petitions for registration of land filed in the Land Court, and for reviewing as to form rental agreements, pro tanto releases, general releases, deeds, taking orders, and other conveyance documents relating to transfers from or to any of the State's departments or agencies, when required by statute or requested by the agency.

3. Torts Unit.

The torts unit defends tort and civil rights cases brought against the Commonwealth and its employees. Most of these cases arise under the Massachusetts Torts Claims Act, M.G.L., c. 258, and federal and state civil rights statutes. Continuing the efforts of the preceding fiscal year, the torts unit made significant strides in reducing case backlog by hiring additional attorneys, re-evaluating open case files and actively preparing cases for trial or other disposition. All matters were transferred to a Management Information System in order to insure better docket and file control.

Significant torts cases resolved by the Trial Division during the fiscal year include cases resolved by jury trials ending in defense verdicts, including:

Kolb v. Commonwealth (claim of sex discrimination in employment against DEP); Allen v. Fair (prisoner's claim of violations of 8th and 14th Amendments).

Galvin v. Commonwealth (claim by prisoner's wife of injury from fall on waxed floor while waiting for visit).

Kregor v. MDC (skater claimed injury from fall into hole at MDC rink); Costa v. Commonwealth (claim by student of injuries from assault by other students at hockey jamboree held at DEM skating rink).

Wiczyk v. Commonwealth (claim of wrongful death of pedestrian killed by automobile driven by state employee).

Rodriguez v. Commonwealth (claim for injuries incurred during attempted escape from state hospital); Tate v. Hardy (claim of intentional torts and civil rights violations arising from search by Capitol Police Officers in state office building).

Other cases terminated in court rulings granting dismissal, summary judgment, or directed verdicts for the defense. Examples include:

Fredyma v. Commonwealth (civil rights claim alleging health risks from work-site energy conservation programs); Adamor v. Tammaro (civil rights claim against state trooper arising from seizure of money at Logan Airport).

Eisenberg v. Nixon (civil rights claims against judge and bail commissioner arising from prosecution of criminal trespass charge); Witkowski v. Commonwealth (claim for negligent release of prisoner).

Dean v. EOTC (damage claim arising from an automobile accident allegedly caused by oil on Route 2 in Florida); Frenkle v. Webber (claim of police brutality during arrest).

Berson v. Lamb (claim by terminated employee for sick and vacation pay); Keidel v. MDC (traffic accident claim); Forte v. Hanson (prisoner's claim against appointed counsel for refusal to appeal); Robertson, Adm. v. Worcester State Hospital (wrongful death claim alleging medical malpractice).

Pacillo v. Gutensohn (claim of discrimination in employment). Another case in this category, Monahan v. Dorchester Counseling Center, resulted in a decision of the United States Court of Appeals for the 1st Circuit holding that a mental patient voluntarily in state care lacks any constitutional right to services.

Trial Division attorneys negotiated settlements in other tort cases, resolving these disputes for amounts substantially less than claimed. Examples include:

McDonald v. Fair, (concerning care for pregnant inmates at MCI-Framingham, settled without monetary payment, based on an agreed injunction); Martin v. Commonwealth (claim for improper discharge, settled for less than the plaintiff's costs and filing fees).

Lipson, Adm. v. Commonwealth (civil rights claim arising from death of state hospital escapee, settled for less than half the amount claimed based on agreement to establish task force); Gilmore v. Commonwealth (claim for negligent infliction of emotional distress by survivors of murder victim, settled for less than 25% of claim).

Hurley v. MDC (claim by skater for injuries allegedly caused by rut in ice at MDC rink, settled after a jury verdict). In Hopper v. Fair, the use of a neutral mediator resulted in an expeditious and satisfactory settlement. The case involved civil rights and negligence claims arising from the death of a state hospital patient, held in seclusion, due to an undetected ectopic pregnancy.

Two significant cases, in which juries returned verdicts against the Commonwealth during the fiscal year, are presently on appeal.

Mohr v. Commonwealth, a claim of wrongful adoption, raises the question of what duty the Department of Social Services has to disclose to prospective adoptive parents information about the child's natural parents.

Chackrabarti v. Mulligan involved the discharge of a state hospital psychiatrist; both sides have appealed from a $75,000 damage award.

4. Industrial Accident Unit.

Until the end of Fiscal Year 1992, the industrial accident unit defended the Commonwealth in administrative proceedings on workers' compensation claims filed by state employees, as well as in enforcement actions in Superior Court and appellate matters before the Appeals Court and Supreme Judicial Court. The unit also defended the Commonwealth in "line of duty" and "assault pay" cases pursuant to M.G.L. c. 92, §63B and c. 30, §58.

During Fiscal Year 1992, state employees filed 13,337 first reports of injury. Unit attorneys appeared in approximately 2,000 cases before the Department of Industrial Accidents. Total disbursements by the Commonwealth for state employees' workers' compensation claims in FY '92, including accepted cases, lump sum settlements and orders of payment pursuant to Administrative and Court decisions were as follows:

Incapacity Compensation (including Attorneys fees of $1,156,857.63 and penalties of $13,669.96)	$52,639,941.27
Medical Payments	14,871,534.50
Total Disbursement	$67,511,475.77

On December 23, 1991, the new Workers' Compensation Act was signed into law. The amendments to the Act represent a comprehensive overhaul of the workers' compensation system implementing changes at all levels of the administrative process. The new amendments assign responsibility to defend the Workers' Compensation Trust Fund, M.G.L. c. 152, §65, against administrative claims for reimbursement made under c. 152, §§37 and 37A to the Office of the Legal Counsel to the Department of Industrial Accidents. The Workers' Compensation Trust Fund and related sections encourage employment of handicapped and disabled workers. The Fund relieves the insurer from the burden of paying compensation for an employee's disability due to the combined effect of a previous injury and one received later.

In June 1991, the Attorney General initiated a review of the Office's participation in the defense of state employees' claims for workers' compensation benefits at the administrative level. The Attorney General determined that the defense of these claims in the course of administrative proceedings before the Department of Industrial Accidents could be handled more efficiently by the agencies where the employees work and where the claims arise. Beginning in February 1992, six agencies, representing approximately 65% of claims, began defending their own employees' workers' compensation claims. As of the end of the Fiscal Year, plans were in place for the imminent transfer of the remaining cases to the Workers' Compensation Litigation Unit, within the Executive Office of Administration and Finance.

5. Affirmative Litigation.

The Trial Division has continued its traditional responsibilities of seeking damages and other relief on behalf of the Commonwealth for injuries to its property and personnel, including, but not limited to, counter-claims, cross-claims, and third party claims for indemnification or contribution in appropriate cases. In addition, for the first time, the Trial Division drew on its real estate expertise to initiate an affirmative case solely in the name of the Commonwealth, for the purpose of protecting vulnerable citizens.

In Attorney General v. Dime Savings Bank, filed in the Supreme Judicial Court, Division attorneys obtained a declaration that tenants in foreclosed residential properties may be removed from possession only through summary process, with its attendant procedural protections. As of the end of the Fiscal Year other similar afirmative initiatives were under consideration.

FAMILY AND COMMUNITY CRIMES BUREAU

The Family and Community Crimes Bureau is responsible for oversight as well as policy and program development including legislative initiatives and community outreach in four areas:

1. Issues affecting children and youth.
2. The elderly
3. Persons with disabilities.
4. Domestic violence and victims of crime.

The Victim Compensation and Assistance Division comes under the supervision of the Family and Community Crimes Bureau. The Family and Community Crimes Bureau works closely with the Government Bureau and the Consumer Protection Division of the Public Protection Bureau in regards to these issues affecting elders, persons with disabilities, and children including the regulation of long-term care facilities, access to the criminal justice system, and violence in the schools.

In addition, the Bureau works closely with state agencies involved with these vulnerable populations including the Executive Office of Elder Affairs and the Department of Education.

1992 ACCOMPLISHMENTS

A. THE ELDERLY

An issue of critical importance to the Attorney General is the quality of life for our most cherished citizens, the elderly. It is for this reason that,the issues of elder abuse and neglect, consumer frauds and financial exploitation of the elderly is a major focus of the Family and Conmiunity Crimes Bureau.

Established in the spring of 1991, the Elder Issues Group of the Attorney General continued to meet throughout 1992 to address issues affecting the elderly from institutional abuse and the update of our nursing home regulations to the misuse of guardianships, conservatorships and powers of attorney.

Within the Attorney General's office, the Family and Community Crimes Bureau in conjunction with the Consumer Protection Division of the Public Protection Bureau and the Medicaid Fraud Division of the Criminal Bureau continued to focus on patient abuse and mistreatment in long-term care facilities as well on consumer frauds directed against the elderly.

In addition, a successful application was made to the Massachusetts Committee on criminal Justice for funding to develop a police training curriculum and program on elder abuse which is expected to be completed in 1993.

In May, 1992, the Family and Community Crimes Bureau presented the first annual Attorney General's elder issues conference on empowering elders and persons with disabilities which featured model programs for financial protection of the elderly, support systems for caregivers and health care decisionmaking.

B. DOMESTIC VIOLENCE

The Attorney General's efforts to address the issues of domestic violence were continued and expanded in 1992. The Family and Community Crimes Bureau drafted and successfully lobbied the legislature for the passage of a Stalking bill making it a felony in Massachusetts for someone to repeatedly follow or harass someone and make threats which place the other person in fear of bodily harm or death.

The luncheon series cosponsored with the Harvard School of Public Health featured presentations on several topics including child abuse in domestic violence cases, clemency for battered women imprisoned for killing their batterers, and the effectiveness of batterers' treatment programs. This series will continue in 1993 in an effort to formulate a system-wide coordinated response which will be effective over time in stopping the violence.

1992 marked the presentation of the Attorney General's second annual Domestic Violence Training Conference for Police. Over 300 police officers attended the training in October, 1992, which focused on the issues beyond the limits of the legal procedures mandated by Chapter 209A, including the enactment of the statewide domestic violence registry as well as a panel featuring innovative police programs in domestic violence and presentations by clinicians regarding the myths which surround battering relationships.

Finally, in cooperation with the Massachusetts Medical Society and the Massachusetts Hospital Association, a domestic violence working group was formed which provided domestic violence training and education for health care professionals.

C. CHILDREN AND YOUTH

In 1992, the Attorney General's Office worked to establish collaborative relationships with the Department of Education and local school districts through the Superintendents' Advisory Committee and through that Advisory Committee, to facilitate the development of cooperative relationships between the schools and local law enforcement officials.

The Family and Community Crimes Bureau provided the staff support for these efforts by offering technical assistance and training in areas of mutual concern to law enforcement and the schools including drug and alcohol education and violence prevention programs.

As an adjunct to this effort, in 1992, the Attorney General expanded the SCORE (Student Conflict Resolution Experts) program to five additional school districts including Lawrence, Fall River, Springfield, Boston, and Holyoke. In addition, for the first time, peer mediation training was provided to youths in the custody of the Department of Youth Services. (See Local Consumer Division report of the Public Protection Bureau.)

The Children's Issues Group formed in 1991 continued to meet under the auspices of the Family and Community Crimes Bureau and the Governmēnt Bureau. This group meets periodically to review issues of concern to children's advocates in hopes of resolving some issues short of litigation and to foster a better understanding between the advocates and the Office of the Attorney General in these areas.

In 1992, there were significant reform efforts underway in the area of foster care as well as the processing of care and protection cases in the district courts.

In the latter instance, the Family and Community Crimes Bureau played a central role with the Government Bureau in the establishment of the Supreme Judicial Court's Juvenile Justice Commission to address these issues in a comprehensive and systematic matter.

In the area of juvenile justice, the Family and Community Crimes Bureau prepared and presented a statewide educational seminar and manual for prosecutors on the legal implications of the 1991 amendments to the juvenile transfer law. In conjunction with this, the Family and Community Crimes Bureau became involved in system-wide issues and efforts regarding the future of the juvenile court and the preservation of the integrity of our nationally acclaimed juvenile justice system.

Finally, the Family and Community Crimes Bureau also presented the first annual Attorney General's campus security conference in cooperation with the Higher Education Coordinating Council and the Office for Public Safety. The issues covered at the April, 1992, sessions included jurisdictional, administrative, and procedural law and policies affecting campus police.

D. VICTIMS ISSUES

1. Victim Witness Assistance Board

The Attorney General continued to personally chair the victim Witness Assistance Board. In 1992, a major reorganization and restructuring of the support agency for the Board, the Massachusetts Office of Victim Assistance (MOVA), was undertaken following a drastic cut in the Board's funding in the FY,92 budget.

Under the leadership of Executive Director Heidi Urich, MOVA downsized its staff, consolidated its responsibilities, streamlined its data information systems, and redesigned its oversight of the Victims of Violent Crimes federal grants.

By the end of 1992, MOVA and the Board had stabilized and were able once again to begin the slow process of rebuilding services for victims and victim programs across the state.

With a small increase in the budget in FY 193 and a grant from the Massachusetts Committee for Criminal Justice, MOVA was able to resume its outreach and training efforts in cooperation with the District Attorneys' victim witness program directors and the VOCA providers in the areas of multicultural sensitivity and advocacy services for domestic violence victims.

In addition, in an effort to reach out to the citizens of urban communities, the Family and Community Crimes Bureau along with the Executive Office participated in the review and promulgation of a citizen handbook regarding civil and criminal legal issues for adults and juveniles.

2. Victim Compensation And Assistance Division

The Massachusetts Victims of Violent Crime Compensation Act., G.L. c. 258A, provides financial compensation to victims of violent crime for out-of-pocket losses they sustain as the direct result of physical injury or death. Claims for compensation are filed in a district court.

An eligible claimant is entitled to receive up to $25,000 for out-of-pocket expenses including medical and counseling bills, lost wages, loss of support, homemaker services, and up to $2,000.00 for burial services.

The Division is required to investigate all claims, submit a written recommendation to the court on whether the claimant is legally entitled to receive compensation, and represent the Commonwealth in all court proceedings involving victim compensation claims.

During 1992, the Division opened 1055 cases and closed 965. The closed cases represent payments totalling $2,545,841.00, the largest expenditure of funds to crime victims in the Division's history.

A. Policy Develolpment

The Division developed and implemented a number of policies regarding payment of claims. Although G.L. c. 258A authorizes payment for "homemaker services", it provides no guidance on how the Division should evaluate, investigate and pay such claims. Division staff conducted a survey of homemaker services agencies in Massachusetts through the Massachusetts Rate Setting Commission to obtain rates for these services. Based on the data collected, they established criteria for determining eligibility for homemaker services and a formula for calculating compensation.

Similarly, G.L. c. 258A SS 3(a) permits rape victims to receive payment for emergency housing costs but does not provide criteria for paying these claims. As a result, eligible claimants were not receiving compensation for this expense. Division staff developed a definition of emergency housing and established verification requirements, thereby enabling rape victims to be compensated for these costs.

During the past year, the Division received a number of claims filed by executors and administrators of estates.

The Division has determined after careful research, that the intent of the victim compensation statute is to relieve the financial hardship of surviving dependents and family members of innocent crime victims; thus, executors or administrators are not eligible "claimants" as defined by c. 258A.

Finally, pursuant to G.L. c. 258A SS 5, payment for lost wages must be based upon the victim's net weekly wage at the time of the crime. The Division has reviewed both the federal and state tax rates to establish a simple formula for calculating net wage figures.

B. Outreach and Training

The Division's staff has maintained a close working relationship with victim-witness advocates in District Attorney's offices across the state. Throughout the year, Division advocates conducted trainings for victim-witness advocates in Bristol, Essex, Hamsphire and Franklin counties. During the trainings, advocates explained case processing and answered questions pertaining to eligibility, available amounts of compensation, and the types of compensable expenses. Furthermore, staff members increased their outreach efforts by attending meetings and trainings, as well as memorial and dedication services sponsored by a wide range of victim support groups.

Commonwealth v. R.H. McKnight, Inc., et al

During 1992, the Division defeated a Motion to Dismiss brought on behalf of Robert H. McKnight, individually, in this deceptive solicitation case. Defendant R.H McKnight, Inc. is a professional solicitation company which conducts fundraising for various police and fire organizations throughout the country, by the telephone sale of advertising space in publications or ad books it publishes. This action, which alleges that in the course of telephone solicitations McKnight employees falsely led donors to believe they were law enforcement personnel and that funds obtained would benefit local police departments, also names as defendants the corporation's president and a supervisory employee.

ESTATES AND TRUSTS

Fuller Trust, Ing.

Settlement reached in this matter resolved a dispute with the Attorney General concerning the trustee's expenditure of almost all of the Fuller Trust's liquid assets on predevelopment costs, including sizeable legal fees paid to law firms to develop a life care community on property owned by the Trust. The Division obtained the resignation of two trustees, both lawyers with prominent Boston area firms, and repayment by those attorneys of $250,000, each, to the Trust. Established under the will of Caroline Weld Fuller, the Trust's original purpose was to provide housing for women in need of a home at a reasonable expense. In 1988, the trustees obtained

ELECTIONS DIVISION

The Elections Division is responsible for providing legal representation to the Secretary of State, the Office of Campaign and Political Finance and The State Ballot Law Commission regarding election and campaign finance related issues.

In fiscal year 1992, the Division was involved in several elections related litigations. In the consolidated cases of Black Political Task Force, et al, v. Secretary of State of Massachusetts and Massachusetts Republican Committee, et al, v. Secretary of State of Massachusetts, the Division, before a three-judge panel of the United States District Court for the District of Masssachusetts, successfully defended against plaintiffs' constitutional challenge to the Commonwealth's state and federal redistricting plans. Plaintiffs contended that the Commonwealth's practice of deferring legislative redistricting until the 1994 election.

In light of the availability of 1990 census data, violated the Fourteenth Amendment mandate of "one-person one-vote" as well as section 2 of the Voting Rights Act. Plaintiff's preliminary injunction on the one-person one-vote issue was denied by the court.

Accordingly, the court refused to order Massachusetts to reapportion its legislative districts at this time. The court also denied plaintiffs' motion for a preliminary injunction, under their Voting Rights Act claim, which, if allowed, would have prevented the Commonwealth from distributing ballots on the existing districts.

In Tiernan v. Connally, the Division successfully defended the Secretary of State's refusal to place plaintiff's name on the presidential primary ballot where plaintiff filed his nomination papers ten minutes past the statutorily set filing deadline. The Suffolk Superior Court ruled that compliance with statutory provisions regarding ballot access is mandatory and that there is no doctrine of "equitable filing".

A similar holding was rendered in Carson v. Co ll and upheld by the Appeals Court upon plaintiff's appeal.

In Socialist Workers Party v. Boston Election Commission & State Secretary,.plaintiff alleged that the Boston Election Commission failed to certify valid signatures on its candidates' nomination papers and sought a preliminary injunction ordering the Secretary of State to place candidates' names on the ballot. The Election Division successfully defended against plaintiff's motion for preliminary injunction because no Socialist Party candidate filed sufficient signatures with the Secretary to obtain ballot placement. A motion to dismiss plaintiff's complaint was subsequently allowed.

The Division represented the State Ballot Law Commission in The Appeals Court in Garrison v. Merced and the State Ballot Law. There Merced, a candidate for state representative in,a state primary election, failed to designate on one of his nomination papers the political party whose nomination he sought.

At issue was whether that failure to comply with G.L. c. 53, SS 45, was fatal to having his name printed on the ballot at the primary election. The State Ballot Law Commission ruled that, absent proof that the voters who signed the nomination papers were misled, it was not fatal.

The Appeals Court affirmed the Superior Court's ruling that the name of the political party was necessary and its omission was not a mere technicality.

The Elections Division, working with the Government Bureau, advised the Secretary of State on February 14, 1992 that Chapter 462 of the Acts of 1991, "An Act Providing for Certain Optional Student Fees" was subject to referendum under Amendment Article 48 of the Massachusetts Constitution. The proponents of the petition, however, did not file sufficient additional signatures to place the matter on the statewide elections ballot.

Also in conjunction with the Government Bureau, 25 of 44 initiative petitions filed on the first Wednesday of August, 1991 were certified, 9 were denied certification, and 10 were withdrawn pursuant to Amendment Article 48.

The Division also brought suit against over 80 Candidates and treasurers of political committees who had failed to file the required campaign finance disclosure forms with the Office of Campaign and Political Finance. In March 1992, the Division sent warnings to all non-filers asking them to file.

PUBLIC RECORDS, FAIR INFORMATION PRACTICES ACT AND OPEN MEETING LAW

The responsibility for the enforcement of the Public Records Law, the Fair Information Practices Act, and the Open Meeting Law belongs to the Elections Division.

The Division advised state agencies and the public on the requirements of the Public Records Law and the Fair Information Practices Act. The Division worked with the Supervisor of Public Records in the Secretary of State's Office to resolve disputes regarding the responsibility of public agencies to make documents available to those requesting public records.

The Elections Division is also responsible for advising state agencies and the public on the requirements of the State Open Meeting Law. In fiscal year 1992 the Division mediated an Open Meeting Law dispute involving the Massachusetts Aeronautics Commission without resorting to litigation.

WESTERN MASSACHUSETTS DIVISION

The Western Massachusetts Division of the Office of the Attorney General is responsible for legal matters in the four western counties of Berkshire, Franklin, Hampden and Hampshire. The Division is located in Springfield and is staffed by assistant attorneys general, investigators and support staff. During fiscal 1992, the division was responsible for approximately 500 cases.

The office litigates a wide range of cases, including tort, contract, eminent domain, worker's compensation, enviromental, consumer protection, civil rights, adminstrative appeals and victims of violent crime compensation. The division also prosecuted fraud cases for the Division of Employment and Training and the Criminal Bureau's Insurance Fraud Division.

FY 192 saw the expansion of the Medicaid Fraud Control Unit in Western Massachusetts and the successful conclusion of several prosecutions. Additionally, the office joined with the Western Massachusetts District Attorney, the Enviromental Police, and the Department of Environmental Protection to form a Western Massachusetts Environmental Task Force.

As part of the Western Massachusetts efforts to educate and inform, personell from the office participated in a number of conferences, radio shows, speaking engagements and interviews on a whole range of topics.

In cooperation with the Division of Capital Planning and operations new and larger office space is being constructed at our present location. This space once completed will provide a professional space appropriate for a law enforcement office and provide greater access to the people of Western Massachusetts consistent with Attorney General Harshbargers commitment to the area.

October 24, 1991

Joseph D. Malone
Treasurer and Receiver General
State House, Room 227
Boston, Massachusetts 02133

Dear Treasurer Malone:

You have asked for my opinion on a question regarding compensation of the ex officio members of the Emergency Finance Board created by G.L. c. 10, § 47 (1990 ed.) ("section 47[1]"). Specifically, you ask whether you as Treasurer and current chairman of the Board, and the other ex officio members of the Board, may be compensated for meetings that you attend through designees. Your request arises because you and the other ex officio members send designees to Board meetings, as authorized by the Legislature under section 47, but are unsure whether you may be compensated for doing so or whether you may only be compensated for meetings that you attend in person.[1/]

For the following reasons, I conclude that the Legislature, under section 47, has authorized ex officio members to be compensated at the applicable statutory rate (seventy-five dollars per meeting) for meetings to which they send designees. I further conclude, however, that the special statutory one-hundred-dollar-per-meeting rate for the chairman of the Board applies only to those meetings that the chairman attends in person. The chairman may only be paid seventy-five dollars for meetings that he or she attends through a designee. [2/]

I.

The Emergency Finance Board is responsible for overseeing certain aspects of the spending and indebtedness of cities, towns, and regional school districts. See generally G.L. c. 40, § 5B; c. 44, §§ 7t 8, 10; c. 71, §§ 14B, 16(n), 16H; c. 121B, § 22. Pursuant to G.L. c. 10, § 47 ("section 47"), the Board consists of five members. Three members serve ex officio (the Treasurer and Receiver General, the State Auditor, and the Director of Accounts for the Department of Revenue) and two members are appointed by the Governor. The Governor selects one of these five members to serve as chairman; currently, you

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1/ In keeping with the practice followed by previous Attorneys General, this opinion is confined to an interpretation of existing law and does riot set forth my own views or any suggestions for amendments of the relevant statutes. I have in a separate letter made such suggestions to the Senate President and the Speaker of the House.

2/ You have also inquired as to the Legislature's original intention in providing for the compensation of Board members. The Legislature's precise reasons for providing compensation cannot be ascertained from the relevant statutes, and it is not necessary to do so in order to interpret section 47.

serve in this position. Section 47 permits each ex officio member, but not the appointive members, to "designate an officer or employee in his department who shall, without additional compensation therefor, perform [Board] duties during (the ex officio member's] absence or disability."

Section 47 makes different provisions for compensating the appointive members, the chairman, and the ex officio members, as follows:

> [1] Each appointive member shall receive as compensation for each day's attendance at board meetings, when acting as a member of the board as provided by law, the sum of seventy-five dollars.
> [2] The chairman of the board, shall receive as compensation for each day's attendance at board meetings the sum of one hundred dollars.
> [3] The state treasurer, the state auditor, the director of accounts and the assistant [3/] shall receive as compensation for each day's attendance at board meetings, when acting as a member of the board or attending as provided by law, the sum of seventy-five dollars.

Section 47 limits the total compensation in any one year to seven thousand dollars for members and ten thousand dollars for the chairman. The compensation received by the ex officio members, including the chairman if he or she is a state official, is to be in addition to their regular compensation as state officials. [4/]

Significantly, the circumstances in which ex officio members may be compensated are different from those in which appointive members and the chairman may be compensated. Appointive members receive compensation only "for each day's attendance at board meetings, when acting as a member of the board as provided by law," and the chairman receives compensation only "for each day's attendance at board meetings.

3/ The "assistant" is not mentioned elsewhere in section 47 but was originally named by the Director of Accounts from within his or her division of the Department of Revenue. See St. 1933, c. 366, § 1. Since 1986, however, language in the annual appropriation line item for the Board (line item 0630-0000 of section 2 of each general appropriation act) has barred any Department of Revenue employee (which would include the Director of Accounts) from receiving compensation for their work for the Board. See St. 1986, c. 206; St. 1987, c. 199; St. 1988, c. 164; St. 1989, c. 240; St. 1990, c. 150; St. 1991, c. 138.

4/ This has been the case since 1933, the year the Board was created. See St. 1933, c. 366, § 1, ¶ 2 (providing that each ex officio member would receive, "for each day's services rendered in connection with the work of the board . . . thirty dollars in addition to his regular compensation . . . .") (emphasis added).

In contrast, ex officio members receive compensation "for each day's attendance at board meetings, when acting as a member of the board or attending as provided by law . . . . This phrase permitting compensation when the member is "attending as provided by law" is included only as to ex officio members and not as to appointive members or the chairman. As I discuss below, my opinion turns on the correct interpretation of the phrase "attending as provided by law."

II.

The phrase in section 47 permitting compensation for "each day's attendance at board meetings" is sufficient to make clear that some form of "attendance" is required for purposes of compensation. Therefore, the additional phrase "attending as provided by law," because it cannot be presumed to be redundant, must mean something different than the phrase "each day's attendance at board meetings . . . ." 5/. The phrase "attending as provided by law" must qualify or explain in some manner the requirement that ex officio members may only be compensated for each day's attendance at board meetings."

In interpreting the phrase "attending as provided by law," I look first at the words of section 47 and then at the legislative history of section 47 and its predecessor statutes. My interpretation is guided by the principle that "'a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated."' Board of Education v. Assessor of Worcester, 368 Mass. 511, 513 (1975)(citations omitted); see Commonwealth V. Fall River Motor Sales, Inc., 409 Mass. 302, 316 (1991) (same).

A.

The phrase "attending as provided by law," standing alone, indicates that the word "attending" is not to be given its ordinary dictionary meaning but instead is to be understood in some particular legal sense.

5/ It is a basic principle of statutory construction that wherever possible, every word of a statute must be given some meaning, and no word should be considered redundant or superfluous. Risk Management Found of the Harvard Medical Insts., Inc, v. Commissioner of Ins., 407 Mass. 498, 503 (1990); International Org. of Masters, Mates & Pilots v. Woods Hole. M.V. & N. S.S. Auth., 392 Mass. 811, 813 (1984). A statute should not be construed in a manner that nullifies one of its provisions unless there is no reasonable alternative. Ben Elfman & Sons. Inc. v. Home Indem. Co., 411 Mass. 13, 18 (1991).

The phrase suggests that there is a special manner of attendance permitted or prescribed by law. [6] That "law" appears to be section 47 itself, which, as noted above, permits ex officio members to perform their duties through designees.

This interpretation is confirmed by the circumstance that both the power to name designees and the right to be compensated for "attending as provided by law" are confined to ex officio members and do not apply to appointive members. If only ex officio members may send designees to meetings, and only ex officio members may be compensated for "attending as provided by law," then the logical conclusion is that ex officio members may be compensated for attending meetings through designees. In short, the phrase "attending as provided by law," viewed in the context of section 47 as a whole, [7] appears to mean "attending either personally or through the designee permitted by law."

B.

The legislative history of the statutes governing the Board supports this interpretation. [8] Although the development of these statutes since the creation of the Board is complex and involved, it sheds important light on the questions you have posed. I will therefore review these statutes in some detail.

6/ See Black's Law Dictionary 1224 (6th ed. 1991) (defining "provided by law,, as meaning "prescribed or provided by some statute"); Opinion of the Justices, 303 Mass. 615, 619 (1939) (defining "provided by law" as meaning "in the manner fixed by the Constitution for the enactment of statutes generally").

7/ The applicability of a statutory provision may be unclear when the sentence stands alone, but more clear when that provision is viewed in its statutory context. See, e.g., James J. Welch & Co. v. Deputy Comm'r of Div.of Capital Planning and Operations, 387 Mass. 662, 666 (1982); see also Attorney General v. School Committee of Essex, 387 Mass. 326, 337 (1982) (noting that every word or phrase of a statute must be read in context).

8/ When a statute is clear, there is no need to resort to legislative history as an aid to construction. Boston Neighborhood Taxi Ass'n v. Department of Pub. Util., 410 Mass. 686, 690 (1991); Salem Hospital v. Commissioner of Pub. Welfare, 410 Mass. 625, 629 (1991). The phrase "attending as provided by law," however, is not clear, and legislative history is therefore relevant. Ambiguous statutes "are to be interpreted not based solely on simple, strict meaning of words, but in connection with their development and history, and with the history of the time and prior legislatiori." Quincy City Hosp. v. Rate Setting Comm'n, 406 Mass. 431, 443 (1990)(construing word "appeal").

When the Board was created in 1933, only the appointive and not the ex officio members were entitled to compensation, and only "for each day's attendance at board meetings." St. 1933, C. 49, § 1. Later in 1933, however, the Legislature enacted a statute permitting the ex officio members to be compensated "for each day's services rendered in connection with the work of the board," whereas appointive members could still be compensated only for "each day's attendance at board meetings." St. 1933, c. 366, § 1.

The Legislature thus plainly directed that ex officio members be compensated for their services rendered in connection with the work of the board, including work outside of meetings, rather than merely for their actual attendance at board meetings. As noted above, this compensation was in addition to the ex officio members' annual statutory salaries.

Between 1933 and 1963, the Legislature enacted a series of statutes expanding the functions 9/ of the Board and providing for compensation to Board members when performing those functions. These statutes, few of which were codified in the General Laws, created a hodge-podge of different provisions governing the compensation of Board members in different situations. 10/

In 1963, the Legislature enacted "An Act Revising Statutory Salaries," which raised the statutory compensation levels for a broad range of state officials and members of state boards and commissions. St. 1963, c. 801. As a part of this Act, the Legislature directed that both appointive and ex officio members of the Emergency Finance Board be compensated for each day's attendance at board meetings "when acting as a member of the board as provided by law." Id. § 87.

9/ Such a statute was enacted nearly every year between 1933 and 1963. Examples include St.1936, c. 81, § 2; St.1945, c. 74, § 1; St.1945, c. 124 (inserting G.L. c. 40, § 5B); St.1949, c. 638, §1 (inserting G.L. c. 71, § 16H); St.1955, c. 730, § 42 (affecting appointive members only); St.1958, c. 70, (amending G.L. c. 44, § 8(8)); St.1959, c. 329, § 2; St.1960, c. 330, § 14; St.1962, c. 704, § 14; and St.1963, c. 490, § 14.

10/ The 1936, 1945, and 1959 statutes set compensation rates for Board members only "when acting under this act" or "when acting under this section" rather than when performing all Board functions. See St.1936, c. 81, § 2; St.1945, c. 74, § 1; St.1945, c. 124; St.1959, c. 329, § 2. In addition, the first of the 1945 statutes compensated ex officio members "for each day's service rendered in connection with the work of the board under this act," whereas the 1959 statute compensated ex officio members only for "each day's attendance at board meetings." See St.1945, c. 74, § 1; St.1959, c. 329, § 2. Also, the 1959 statute set a different rate for appointive members (thirty-two dollars) than for ex officio members (thirty dollars). St.1959, c. 329, § 2; See also St. 1955, c. 730, § 42. For no apparent reason, the 1960, 1962, and 1963 statutes ignored this differential and instead incorporated the compensation standards set forth in the first 1945 statute. See St.1960, c. 330, § 14; St.1962, c. 704, § 14; St.1963, c. 490, § 14.

The rates were increased to forty dollars for appointive members and thirty seven dollars and fifty cents for ex officio members. This marked the first appearance of the key phrase "when acting as a member of the board as provided by law" in the statutes governing the compensation of ex officio Board members. 11/ The phrase was evidently intended to make clear that the pay raise applied to Board members regardless of which of the uncodified statutes they happened to be acting under at any particular time. This replaced the previous system, under which Board members would be compensated differently depending on what matters were before the Board, with a uniform system of compensation. It is important to note, however, that nothing in the "Act Revising Statutory Salaries" superseded the provisions permitting eA officio members to be compensated not only for actual attendance at meetings but also "for each day's services rendered in connection with the work of the board." St.1933, c. 366, § 1; St.1945, c. 74, § 1. These provisions remained in place.

Finally, in 1980, the Legislature enacted a statute establishing a new Emergency Finance Board to succeed the old Board. St.1980, c. 552. That statute is essentially the same as the current G.L. c. 10, § 47, the only subsequent change being that the Auditor was made an ex officio member of the provisions were superseded, however, the Legislature was careful to change the controlling phrase to provide that each ex officio member would be compensated "when acting as a member of the board or attending as provided by law."

This legislative history confirms that the phrase "attending as provided by law" was intended to preserve, in part, the right of ex officio members to be compensated not only for personal attendance at Board meetings but also for other services performed in connection with the work of the Board. The right was only partially preserved; gm officio members could not be compensated for all of their work for the Board, but only for each day's attendance at board meetings" when "attending as provided by law," i.e., attending either personally or through designees.

If ex officio members are to be compensated at all, then this limitation makes sense. See School Committee of Greenfield v. Greenfield Education Association, 385 Mass. 70, 79-80 (1982) (noting that statute should be given a reasonable construction). An ex officio member might spend a significant amount of time outside of Board meetings in reviewing matters to be decided by the Board. But unless the member actually attends Board meetings to communicate his or her views and to vote on these matters, either personally or through a designee, then the time spent outside of Board meetings would contribute little to the work of the Board.

11/ An earlier "Act Revising Certain Statutory Salaries," St.1955, c. 730, § 42, included this phrase, but only as applied to appointive members. The phrase appears to have served the same purpose for such appointive members as the statute described in the text served for ex officio members.

Accordingly, the Legislature apparently intended that ex officio members' compensation should depend on their participation, personally or through designees, at meetings of the Board.

C.

Although I conclude that ex officio members may receive compensation for meetings that they attend through designees, this right does not extend to the Board's chairman when acting as such. Section 47 provides that "[t]he chairman of the board, shall receive as compensation for each day's attendance at board meetings the sum of one hundred dollars. Unlike ex officio members, there is no provision for the chairman to receive this level of compensation when "attending as provided by law," i.e., when attending through a designee. Nor should such a provision be inferred. 13/ Personal attendance at meetings is therefore required in order for the chairman to receive the special one-hundred-dollar-per-meeting rate.

This does not mean, however, that the chairman may never receive any compensation under section 47 unless he or she actually attends Board meetings. Since 1933, the Legislature has evidently felt that the ex officio members of the Board should be compensated for their Board-related work even if they did not personally attend meetings. There is nothing in section 47 to indicate that an ex officio member forfeits this right to compensation for work outside of meetings if he or she is appointed chairman of the Board. Put differently, if the chairman is an ex officio rather than an appointive member, then he or she may be compensated at the seventy-five dollar rate for attending Board meetings through a designee.

Therefore, in your current role as chairman, you may not receive one hundred dollars per meeting for meetings that you do not attend.

But, because you are the Treasurer, you continue to fall within section 47's language permitting "the state treasurer [to] receive as compensation for each day's attendance at board meetings, when acting as a member of the board or attending as provided by law, the sum of seventy-five dollars . . . . "

Although it might be suggested that you are not entitled to compensation under this clause because you are not "acting as a member of the board as provided by law" but are instead acting as chairman, I do not adopt this interpretation. As noted above, the phrase "acting as a member of the board as provided by law" was introduced not to distinguish members from the chairman, but instead to refer to all of the various laws under which persons might act as members of the Board.

13/ If specific language appears in one portion of a statute but not another, the absent language should not be read into the provision from which it is missing. Boston Neighborhood Taxi Ass'n, 410 Mass. at 689; Beeler v. Downey, 387 Mass. 609, 616 (1982).

The phrase was first inserted by St.1963, c. 801, § 87, at a time when there was no separate compensation rate for the chairman. Therefore, when inserted, it applied to the chairman as well as the other members.

Nor did the phrase take on any different meaning when reenacted as a part of section 47; it is a basic principle of statutory construction that when language is reenacted, no change is intended in its meaning or scope. Risk Management Foundation, 407 Mass. at 503. Therefore, the phrase "acting as a member of the board as provided by law" does not serve to distinguish members from the chairman.

III.

In sum, I conclude that the Legislature, under section 47, has authorized ex officio members to be compensated at the applicable statutory rate (seventy-five dollars per meeting) for meetings to which they send designees. I further conclude, however, that the special statutory one-hundred-dollar-per-meeting rate for the chairman of the Board applies only to those meetings that the chairman attends in person. The chairman may only be paid seventy-five dollars for meetings that he or she attends through a designee named in accordance with section 47.

Sincerely,

Scott Harshbarger